



Review of a determination by IPSA to refuse an expense claim

Ms Angela Smith MP
Member of Parliament for Penistone and Stocksbridge

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Introduction

1. This review considers two claims Ms Angela Smith MP submitted to the Independent Parliamentary Standards Authority (IPSA) for Accommodation and Office Costs Expenditure under the *MPs' Scheme of Business Costs and Expenses* (the Scheme). The claims made on 26th March 2017 and 31st March 2017 respectively were paid by IPSA.
2. The two claims processed at the end of the financial year 2016/17, were for legitimate expenditure due in the 2017/18 financial year. As such, Ms Smith was informed by IPSA that due to an overspend on the 2016/17 budget, a repayment was required.
3. The role and remit of the Compliance Officer for the Independent Parliamentary Standards Authority (IPSA) was established by the Parliamentary Standards Act 2009 (PSA).
4. The Compliance Officer has two primary functions, as set out in the PSA: Investigations (under section 9); and Reviews (under section 6A).
5. *Section 6A of the Parliamentary Standards Act 2009* (the Act) provides that if:
 - (1)(a) *the IPSA determines under section 6(3)¹ 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 or not to confirm or alter it.*
6. Paragraph 9 of the notes for *Guidance on the Conduct of Reviews by the Compliance Officer for IPSA* states that
 - a. *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.*
7. The first claim processed on 26th March 2017 is numbered 578728 in the sum of £1035.00 and relates to a Council Tax payment for the 2017/8 period. The second claim processed

¹ 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.

on 31st March 2017 was processed by the direct supplier XMA and is in the sum of £669.74, and relates to the purchase of printer cartridges.

8. The two claims were authorised and paid at the time they were submitted for payment.
9. The review relates to a request by IPSA for repayment of an overspend on the office costs and accommodation budgets for 2016-7 following the end of year reconciliation.
10. Ms Smith requested that IPSA conduct an internal review of their decision not to reallocate the claims from the 2016-7 budget to the 2017-8 budget, to which the expenses related. The matter was considered by the IPSA Contingency Panel three times, 3rd July 2017, 20th July 2017 and 15 August 2017. The Panel concluded that the budgets could not be reallocated and the notes of the meeting included the following:

“The Panel decided not to allow re-allocation of the costs, a decision based on ensuring a consistent approach to budget overspends, and because the MP would have received numerous communications on the year-end process, providing guidance that had not been adhered to.” [3 July 2017]

“The MP wrote in to appeal the Panel’s initial decision, providing further information in support of her request. This included assurance that for the office overspend, confirmation from the supplier had been received regarding the date of the transaction (she was told she would be charged the following week, when she made the order on 31/03/2017).” [20 July 2017]

“The Panel had previously rejected a request from the MP to reallocate claims from 2016/7 to 17/18 to resolve office costs and accommodation budget overspends. The overspends were the result of confusion surrounding the year end process.”

“The Panel did not change its view that the two claims in question should have been dealt with properly by the MP at year-end. The guidance has been the same for MPs since 2010/11 and advice sent repeatedly in the months leading up to the year end.”

“The new information regarding XMA’s willingness to issue a credit note against the relevant year was acknowledged and considered. The panel agreed that if XMA do so, we would be able to put these against the £669.74 claim for printer cartridges, meaning the MP will not have to repay it.”

11. As IPSA’s internal review again rejected the claim, the MP was at liberty to request a further review of the decision by the Compliance Officer for IPSA.

The Basis for the Review

12. The following information was submitted by the MP in support of her request for a review:

“The ‘overspends’ defined by IPSA are due to two claims made at the very end of the 2016/17. Both claims were for services or goods to be used in 2017/18.

While I understand and appreciate the end of year guidance from IPSA on both these claims, I honestly believe that IPSA is behaving incredibly rigidly in its interpretation of the rules.”

“The overspend of £1035.00 on the accommodation account is entirely due to the payment of £1331.96 Council Tax for the 2017/18 financial year.”

“This simply occurred because it was paid on the IPSA credit card with a belief that the charge would be made when the statement came through. This was an oversight and due to an attempt to make sure the council tax was paid on time....if I had known this sum was to be charged to the account on that day I would have completed the end of year form to move this expense to 2017/18. I did not know, of course, and only learned that the charge had been made before the end of March after the cut-off date for year end adjustment.”

“It was an honest mistake based on a belief the payment would be taken in April. Again, IPSA year end procedures do not take into account a mistake of this nature because by the time I knew an error had been made it was too late, according to IPSA rules, to rectify it. This, I believe is unfair and needs reconsideration.”

The claim for “£669.74 for new printer cartridges ordered by my staff at 16.30 on the 31st March 2017. When placing the order, my staff were assured it would be charged the following week. As this was, a direct payment order this would have meant the payment would have come out of the 2017/18 budget. Unknown to my staff and I, however, the company charged this amount on the 31st March. This fact did not come to light until well after the period expired for moving costs over to the 17/18 budget. I have approached the supplier XMA who have acknowledged to me that they thought the order details would not go through until Monday 3rd April 2017.”

The Review

13. In conducting the review, the Compliance Officer has utilised both the 2016-2017 and 2017-2018 Editions of the Scheme and, in addition, has consulted the following:
 1. Validation Notes – notes appended to a claim submitted by an MP
 2. Workflow History – shows the date the claim was opened by the MP or proxy, the date of submission to IPSA and details of how the claim was processed by IPSA;
 3. CRM History – computer records of all interactions between the MP and IPSA; and
 4. Correspondence between IPSA and the MP, and with the MP directly.
 5. Legal advice into the application of the Scheme and its application by IPSA and the Compliance Officer.

14. At the core of Ms Smith’s request for a review is the assertion that the payments made erroneously into the 2016/17 budget, due to the ‘end of year scheme’; were, in fact, payments for council tax and offices expenses, meant for the 2017/18 budget. The payments were a result of honest mistakes.

The IPSA Scheme and guidance

15. In order to consider the final determination, the Compliance Officer has also referred to the Schemes' Fundamental Principles, IPSA guidance and General Conditions of the Schemes. Particularly relevant were found to be:

Determination of Claims

2.1 Following receipt of a claim, IPSA will determine whether to allow or refuse it.

The guidance [in grey] provided in the Scheme states: "IPSA supports MPs and their staff to comply with the rules of the Scheme by providing advice on the rules and whether a particular claim is likely to fall within the Scheme. Such advice is not a decision to allow or refuse a claim. That decision can only be made when the claim is submitted, together with the supporting evidence."

Chapter Three: General Conditions of the Scheme

3.3 In making any claim under the Scheme, MPs must certify that the expenditure was for the performance of their parliamentary functions, and that in incurring the expenditure they had complied with the Scheme.

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:

- a. it shall be exercised reasonably; and*
- b. MPs and IPSA shall satisfy the requirement of the Parliamentary Standards Act that MPs must only be paid or reimbursed for costs necessarily incurred for the performance of their parliamentary functions.*

3.12 Expenses may not be transferred between budgets, nor may they be charged in advance of the beginning of the year, except with IPSA's agreement. Amounts not utilised in any particular year's budget may not be carried forward into subsequent years, except in relation to Start-Up Expenditure.

[Amounts incurred above the budget limit in any particular year may not be rolled forward to subsequent years, except in exceptional circumstances at IPSA's discretion. Such amounts will need to be repaid to IPSA in accordance with paragraphs 2.11-2.13]

Chapter Four: Accommodation Expenditure

4.1 The accommodation costs budget is designed to meet costs incurred by MPs as a result of working from two permanent locations.

4.3 Accommodation costs may be claimed for one of the following:

- a. hotel accommodation; or*
- b. rental payments and associated costs as set out in paragraph 4.4; or*
- c. for MPs who own their property, associated costs only as set out at paragraph 4.4.*

4.4 Associated costs 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 landline telephone line, line rental and usage charges; and
- g. installation of a broadband connection and usage charges.

16. As the repayment requests were made after the 2016-17 financial year end but the payments themselves were made *prior* to the 2016-17 financial year end, there is a question over which version of the Scheme applies to the MPs' claims. Section 5(5) PSA provides that 'the scheme (or revision) comes into effect on the date specified in the scheme (or revision)'. The 2016-17 Scheme states at page 4 that it will 'come into effect from 1 April 2016 for the 2016-17 financial year'.

17. Unfortunately, the 2017-18 Scheme appears to have been amended in between its first preparation and the 2017 snap election, which means that the 2017-18 Scheme does not contain as overt an expression of its applicability as the 2016-17 version, and states only that the Scheme 'was updated following the General Election on 8 June 2017'. The date on the title page states 9 June 2017. Whilst there may be some argument as to which version of the Scheme thus applies to consideration of IPSA's determination of the MPs' claims (and it is possible that the 16-17 version applies to the submission of the MPs' payment claims and the 17-18 version then applies to the determination by IPSA to refuse the claim (i.e. to seek a repayment)), having compared the relevant sections of each version of the Scheme, the provisions pertinent to this review are substantively the same and it is therefore unnecessary to come to a firm view as to which edition of the Scheme applies. This is why I considered both versions of the Scheme as part of this determination.

18. The Compliance Officer's task when undertaking a Review is to consider whether the determination by IPSA in refusing or allowing a MPs' expense claim should have been made and should therefore be confirmed. This requires interpretation and application of the Scheme, first as to its strict provision and then as to whether any discretion has been properly applied.

19. The relevant sections of the Scheme to the MPs' claims are as follows:

1. Direct payments for office supplies – (re Ms Smith's Office Expense)

- i. Page 72 of the 16-17 Scheme (and page 57 of the 17-18 Scheme) states that "*IPSA can make payments direct to a number of suppliers on behalf of the MP, removing the need for the MP to pay, claim or provide evidence. These costs will then be subject to the appropriate budget*".

- ii. Paragraph 2 of that section then goes on to refer specifically to direct payments for office supplies, stating that:

“MPs can buy office supplies online using accounts IPSA generated for them with three suppliers: Commercial, Banner and XMA. IPSA will pay these suppliers direct, and MPs do not need to complete a form, reconcile the expense or send any receipts – IPSA will get all the information required from the suppliers when the MP orders online. IPSA will then allocate these costs to the MP’s Office Costs Expenditure budget. If the Office Costs Expenditure budget is exceeded, IPSA may suspend further use of the websites until the new financial year, to prevent a greater overspend. IPSA will contact the MP seeking repayment for the overspend”

- b. IPSA payment card use for council tax, in relation to Ms Smith’s Accommodation Expenses:

- i. Pages 72 – 73 of the 16-17 Scheme provide that MPs ‘can use the Payment Card to pay for any business cost or expense allowable under the Scheme’ and that ‘each transaction is limited to £1,000’ (although MPs can request an increase to that limit). The section states that ‘once a month, IPSA will send a reconciliation form to the MP’s or proxy’s account on the online expenses system’ and that ‘once the reconciliation form is received and processed by the IPSA, the expenditure will then be allocated to the appropriate budgets [...] where a capped budget is exceeded, IPSA will contact the MP seeking repayment for the overspend following the end of the financial year’. The 17-18 Scheme, though different in wording, provides for the same mechanics.

20. The Scheme’s wording makes it clear that IPSA has the power to allocate expenses to a budget and supports an interpretation that this is the year in which it was incurred or the transaction took place rather than the year to which it relates. Thus, in the Compliance Officer’s view, IPSA was correct in the terms of the Scheme in determining that the MPs’ claims were not payable on the basis of a correct allocation of the expenses to the previous year’s budget, leading the MPs to be over budget.

Considerations

21. There is the provision in the Scheme which states that the exercise of any discretion by IPSA and MPs is to be exercised reasonably.

The 2016/17 Scheme states:

“3.3 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:

a. it shall be exercised reasonably; and

b. MPs and IPSA shall satisfy the requirement of the Parliamentary Standards Act that MPs must only be paid or reimbursed for costs necessarily incurred for the performance of their parliamentary functions.”

The 2017/18 Scheme states:

“3.4 The Scheme makes provision for the exercise of 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).”

22. Ms Smith has stated that in regard to the office cost expense, when incurring the charge (which was a direct payment between IPSA and the supplier), her staff were assured by the supplier that the payment would not go through until the Monday, being the 3rd April 2017, thereby thinking that the office expense would be allocated to the 2017/18 financial year’s budget.
23. The question was then considered as to whether the IPSA exercised its discretion appropriately upon upholding its initial decision for Ms Smith when she complained about the treatment of the payments in question.
24. Section 6A(1)(b) PSA requires that the MP must ask the IPSA “to reconsider the determination” and give “it a reasonable opportunity to do so” before engaging the Compliance Officer’s review power. Ms Smith appears to have complied with this (and indeed the wording of section 6A(1)(b) does not appear to create an obligation for IPSA to actually carry out a reconsideration).
25. The Scheme provides for two eventualities for formal reconsideration (in addition to any general power of reconsideration the IPSA may have) specifically relating to repayment requests. Those are:
 - (a) The Contingency Fund
 - (i) Page 51 of the 16-17 Scheme and page 46 of the 17-18 Scheme provides for ‘Contingency Payments’ to be made to MPs in certain situations. 10.10 provides that “*Where an MP necessarily incurs expenditure or liability for expenditure related to the performance of the MP’s parliamentary functions which is not covered by any of the budgets set out in this Scheme or, if it is covered by one or more of those budgets, it exceeds any financial*

limit that may apply, the MP may apply to IPSA to be reimbursed on an exceptional basis in respect of that expenditure”.

(ii) Paragraph 10.11 provides that the IPSA may reject or accept an application under paragraph 10.10 *“at its sole discretion”* and that *“in considering its decision 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.

b. ‘Exceptional Circumstances’

(iii) IPSA’s position is, it does not refer to the discretion to roll forward amounts incurred above budget limits within a financial year, as set out in the Scheme. It refers only to the exceptional circumstances test within the context of the contingency application. It appears that the former discretion is a further and separate method of addressing the situation whereby a payment is allocated against the wrong year and causes an MP to exceed their budget. As advisory text at page 17 of the 16-17 guidance, the Scheme states that *“amounts incurred above the budget limit in any particular year may not be rolled forward to subsequent years, except in exceptional circumstances at IPSA’s discretion”*. In the 17-18 version of the Scheme, this has been transferred into the main body of the statutory guidance at 3.13, stating that *“expenditure above the budget limit in any particular year may not be offset from budgets in the subsequent year, other than at IPSA’s discretion in exceptional circumstances”*.

(iv) It appears that this discretion may have been a less formal and perhaps more fitting method of IPSA reviewing its determination in relation to Ms Smith, potentially allowing for her Office Expense and Accommodation Expense to be rolled forward on the basis of the circumstances she and her advisor set out (particularly in the case of the Office Expense where she relied upon information from the Supplier). However, the Compliance Officer does not think there is any practical detriment or unfairness to Ms Smith in the way (as opposed to the outcome) in which this was considered, as her case was reviewed against an ‘exceptional

circumstances' threshold, albeit in the context of the Contingency Fund discretion.

26. The Compliance Officer considered the issue of 'discretion' extensively with all stakeholders and within the context of legal advice. It became apparent that the 'exercise of discretion' process as part of the Contingency procedure arrived at an appropriate outcome in terms of the payments made by payment card in respect of the council tax payments and that there were no 'Exceptional Circumstances' as part of that process.
27. In the Compliance Officer's view, IPSA could have exercised its discretion favourably regarding the direct payment to the supplier for the Office Expense, given that the supplier has confirmed in writing that it assured Ms Smith's staff that the payment would go out on the Monday and given the fact that as explored above, it is unlikely that Ms Smith had any way of knowing this was not the case (and it is not unreasonable for her to have relied upon the assurance of the supplier as to the payment date).

Observations

28. These observations are made within the context of a very similar review matter, undertaken by the Compliance Officer. Similar considerations were made and advice was sought on similar areas of the law and procedures for the Scheme and the review processes.
29. Fundamental Principle 10 stipulates that the Scheme "*should be clear and understandable. If it is difficult to explain an element of the system in terms which the general public will regard as reasonable, that is a powerful argument against it*".
30. The Compliance Officer believes that all stakeholders might struggle to comprehend the position taken by IPSA regarding this matter, particularly when arbitrating against honest mistakes. The expenses claimed, at any other time of year and in the same manner, would have been an absolute entitlement. Consideration might be given to providing extra clarity in respect of the payments card process and the 'year-end' procedures.
31. It must be implicit to the Scheme that IPSA has administrative arrangements which it can reasonably expect MPs to adhere to. IPSA issued guidance on the administrative arrangements in relation to the Scheme and the financial year end. IPSA sent the year-end guidance to all MPs on 18 January (<http://www.theipsa.org.uk/media/1517/2016-17-year-end-guidance.pdf>), some months in advance of the year-end and the payments made by Ms Smith. The year-end guidance clearly includes a section in bold and underlined titled 'costs incurred during 2016-17 for goods and services to be used in 2017-18 (prepayments).

This section states:

*“If, on or before 31 March, you incur a cost for services, contracts or subscriptions (for example, **council tax** or business rates) [our emphasis added] that relate entirely to a period beginning on or after 1 April 2017 and which you claim through reimbursement, please put the transaction date as 1 April 2017. This is to ensure that the claim will automatically be charged to the new financial year.”*

32. This guidance is clear, then, that it is the date of the transaction that is key to its allocation to a budget, meaning that “standard” claims, i.e. those sought for reimbursement, should be inputted as having a 1 April 2017 transaction date even if they were incurred before that date, should they relate entirely to the new financial year. However, the MPs payments were not “standard” claims and there clearly was some confusion as to the practicalities, particularly close to the recess period.
33. In the Compliance Officer’s view, the guidance is *sufficiently* clear to form the basis for IPSA’s determination to allocate the payments to the 16-17 financial year and to seek repayment from Ms Smith. IPSA informed the Compliance Officer that *“The guidance has been highlighted to MPs on a number of occasions via correspondence, the IPSA Bulletin and financial statements. In respect of the 2016-17 year, we first wrote to MPs on 18 January 2017, enclosing the guidance, to inform MPs of the year-end process they need to follow and the importance of claiming or accruing properly to ensure costs are allocated to the correct year. These messages were repeated, along with links to the guidance, in the first six IPSA Bulletins of the year, which were sent to all MPs and staff. The financial statements sent in February also contained a reminder and link to the guidance”*. Having reviewed the bulletins on the IPSA website, all but the 20 February bulletin which is no longer live does indeed make reference to the year-end guidance and/or the importance of ensuring that costs are allocated to the correct year.
34. MPs have a responsibility to comply with the Scheme and to appraise themselves of the IPSA’s processes and guidance, and particularly within the context of the many reminders sent and links to the year-end guidance. The position was sufficiently clear that direct payments would be allocated to the year in which they were incurred in the absence of a Year End Form being completed by 13 April 2017. Even though it appears to be accurate that Ms Smith could not have known the payments had come out ‘early’ until it was too late, reading the Year End guidance would have alerted the MP to the need to be cautious around payments made on the year-end boundary.
35. Both the Accommodation Expenses for Ms Smith (which were incurred by IPSA payment card) and the Office Expense are provided for within the Scheme. However, in practice the mechanics set out within the Scheme demonstrate, as argued by Ms Smith, that an MP using either of these payment methods will not have a timely method of knowing the details of the payment made (so for example would not be aware of any mistake in a charge applied by a supplier) and against what budget IPSA has applied the payment. Ms

Smith made the point that there was no way for either of them to have known that the payments had gone through earlier than they anticipated until sometime later after the deadline for receipt of the financial year end form to transfer budgets (due by 13 April 2017). This is due to the fact that direct payments do not appear to require further input from the MP placing the order at all, and IPSA payment cards are paid directly by IPSA and then reconciled after the payment is made, once the MPs have filled out the reconciliation form once a month. Consideration might be given to providing greater clarity on this process.

36. It may be worth noting that these two methods of paying allowable expenses under the Scheme do not necessarily fit well with the language of the Parliamentary Standards Act as to IPSA's power/obligation to allow expenses claims, and also in practice do not appear to enable MPs to have the same level of control over the timing and details of the claim made as they would with 'standard' claims whereby they incur expenditure personally and re-claim it from the IPSA. It might be preferable for MPs to have greater access to information about the payments made to avoid this situation arising, but, in the context of this matter, it does not mean that the determination by IPSA to allocate the payments against the 16-17 financial year and then to seek repayment is the wrong determination.

Conclusion

37. The Compliance Officer is satisfied, applying the section 6A(2) test to a review, that the determination by the IPSA to allocate the payment to the 16-17 budgets of Ms Smith for the Accommodation Expenses is the determination that should have been made and is confirmed.
38. However, the exercise of the discretion by IPSA's contingency panel with regard to Ms Smith's office expense claim was not a reasonable one and in this respect, this part of the review should be upheld. Other arguments forwarded by IPSA for disallowing the claim have been considered, but do not outweigh the (written) reasonable expectation that Ms Smith received from the third-party supplier in respect of a payment settlement date.
39. The Compliance Officer concludes that the claim for £669.74 (Office Costs) is allowable and that the 'debt' associated with this claim should be resolved in consultation with Ms Smith.
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, the review will be published in a manner decided by the Compliance Officer.

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Amended by Tracy Hawkings

Compliance Officer for IPSA

13th June 2018