

Compliance Officer for

IPSA

Review of a determination by the IPSA Contingency Panel in relation to office costs overspend.

**Review conducted at request of Simon Fell
Member of Parliament for Barrow and Furness.**

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Compliance Officer
December 2021

Introduction

1. This review has been conducted following a request by Simon Fell, the MP for Barrow and Furness, to consider a determination made by the IPSA Contingency Panel in relation to an overspend on his office cost budget in 2020/21 of £1,262.08. The overspend was incurred due to the purchase of IT equipment to the value £1347.48 in March 2021 with the use of the MPs payment card. The IT equipment was required for two new staff members joining the MPs' office on 1st June 2021.
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 functions¹."
3. The guidance which applies in this case comes under Chapter 6 and Annex C within the Twelfth Edition of the Scheme.
4. IPSA are also responsible for publishing end of year guidance to MPs. The year-end process enables IPSA to fulfil its statutory duty to account to Parliament and provide assurance to the public on how taxpayers' money has been spent. The year-end process is also essential to ensuring that IPSA can provide MPs with accurate data about their spend against budgets. The year-end guidance for 20/21 is relevant in this case.
5. *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

¹ The Scheme of MPs' Business Costs and Expenses (Twelfth 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.

(b) in light of that consideration, decide whether 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:

“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. As IPSA has considered this matter as part of the contingency panel process which effectively reviewed a previous decision from IPSA staff, there is no impediment to the Compliance Officer accepting the request for a review from Mr Fell.

The Review.

8. In conducting the review, the Compliance Officer has utilised the twelfth edition of the Scheme which came into force in April 2020.
9. In addition, the Compliance Officer has conducted the following enquiries:
- Reviewed the information provided by Mr Fell and his office manager.
 - Held a virtual meeting with Ben Shirley, the office manager for Mr Fell.
 - Reviewed the record of the contingency panel minutes.
 - Reviewed the notes held on the IPSA case records management system.
 - Researched the Scheme for MPS Business costs and expenses.
 - Reviewed all recorded telephone calls between Mr Shirley and IPSA staff between Jan -March 2021.
 - Held a meeting with Mr Fells account manager at IPSA.
 - Compared end of year guidance 2019/20 and 2020/21.
 - Consulted with the Communications Team at IPSA to confirm what information had been circulated to MPs offices in relation to end of year guidance.

The basis for the review request by Mr Fell.

10. During the financial year 2020/21, Mr Fell incurred an overspend on his office cost budget. This was entirely due to the fact he used his MP payment card in March 2021 to purchase two computers for new staff members who were due to start work on 1st June 2021. He did this in the honestly held belief that the expenditure would come out of his 2021/22 budget at the point the payment card expenditure was reconciled. The MP believed this was the policy adopted by IPSA for the 2019/20 financial year and he had no reason to believe this had changed in 20/21.
11. The MP states his office manager sought guidance from IPSA before ordering the equipment and was informed the expenditure would come from the 21/22 budget. In support of his argument, he states there was no benefit to his office to order the equipment in March other than to mitigate against delays in ordering and receiving equipment due to the Covid pandemic and to ensure his new staff would have the equipment in place when they started on 1st June.
12. His office manager made several calls to IPSA between January and March 2021 to seek advice on a number of matters in an effort to avoid an end of year overspend. There is a log within IPSA systems to show that 13 telephone calls were recorded between IPSA and the office manager.
13. The MP further points out that the result of following good practice and checking the permissibility of claims ahead of making them with IPSA, he will have a published overspend which will be politically sensitive when reported in local media. This will be used against both him and his office manager who is a known local councillor and have a negative impact from both a personal and professional perspective.
14. The MP states the items of expenditure were not included on the office end of year form as accruals because they were advised this would be done on their behalf by IPSA.
15. As soon as Mr Fell became aware of the overspend, he contacted his account manager who advised him to submit an application to the contingency panel. The matter was considered by the contingency panel at meetings held on 7th October 2021. The panel rejected the application – see below for further detail.

Position of IPSA

16. The Compliance Officer has consulted with various departments within IPSA including the Communications Team and MP Support. It is their position that the end of year guidance for 2020/21 was communicated to MPs offices in the form of bulletins. In addition, end of year webinar sessions was offered in addition to the facility to book calls with IPSA personnel to seek guidance and advice.
17. The account manager for Mr Fell has no specific recollection that advice was requested or given on the use of the payment card in March and there is nothing recorded on the case management system.
18. The account manager has confirmed he did advise the office manager not to not to include Payment Card expenditure in March as accruals on the year end form as this expenditure would be moved on the office's behalf by IPSA. The account manager confirmed that in previous years, offices had been advised to include all accruals on the year end form, regardless of whether it was payment card expenditure or not.
19. The contingency panel considered the application at a meeting held on 7th October 2021. The panel acknowledged the following points:
 - The MP had used his payment card in March despite having very little in the budget to cover this. The proxy had been informed by IPSA that there were only limited funds in the budget, but the MP had used the card assuming that it would be incurred after year end when the costs would be reconciled in the next financial year. The office however completed the year end form and did not include these items, assuming that they would be reconciled. This then resulted in an overspend for 2020-21.
 - The MP's view was that in year-end guidance IPSA had told offices that in 2019-20, to include all accruals on the year end form but not in 2020-21. This is not the case as IPSA had stated in guidance for both years that items paid for in March would be accrued.
 - There was some concern that IPSA had changed its guidance between some years, although overall engagement with offices around this was good and had included things like webinars. It was also noted that both the costs were incurred, and the goods were received in 2020-21 so this is not a case analogous to pre-payment.
 - The panel decided that the application should not be approved because the guidance was clear and had been adequately communicated. The panel also were concerned about the precedent of altering something that had been correctly included in one year and then moving it to another.

20. Based on the above, the panel refused the application and agreed that Mr Fell should repay the overspend on his budget which totalled £1262.08p.

Considerations of the Compliance Officer

21. 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.
22. 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 in light of that, whether to confirm or alter it.
23. The guidance on the contingency panel process is set out in Section 10.10 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.*
24. This case comes down to the understanding and interpretation of end of year guidance policy combined with the advice given to the MP's office by IPSA staff. The Compliance Officer has compared the year end guidance issued for 2019/20 and 2020/21. The guidance changed with regards to pre-payments. The 2019/20 guidance allowed for both goods and services paid for in one financial year but not used until the next financial to be debited to the new financial year budget. The 2020/21 budget only allowed for this eventuality in relation to services only. The other factor to consider is the advice given to MPs offices with regards to what detail was required to be entered on the end of year forms. This appears to be a

source of confusing and misunderstanding in this case. According to the account manager, the MPs office were advised not to include the expenditure on the year end form, when in previous years there was an expectation that this should be done.

25. There is a section within the year end guidance which is relevant. Under the section entitled Reimbursement Claims and payment card transactions it states, “Costs for goods must be allocated to the financial year in which they are received and costs for services must be allocated to the financial year in which they are used, not when they are paid”. With regards to payment card transactions, it then goes on to describe the deadline date for reconciliation.
26. The application to the contingency panel submitted by the MP, makes it quite clear that the IT equipment was purchased for two new staff members who were joining the office on 1st June 2021, but the equipment was ordered and received in March 2021 and correctly costed to the 2020/21 budget. The compliance officer has been unable to determine when the equipment was received by the MPs office and is still trying to seek confirmation on this issue.
27. The Compliance officer has listened to all recorded phone calls to IPSA between January and March 2021 and reviewed all entries on the Case Record Management (CRM) system and can find no evidence to support the MPs assertion that they were specifically advised that it would be okay to purchase items in March on the Payment Card as the expenditure would be debited from the 2021/22 budget. The MP has argued that this should have been made clear during the interactions his office manager had with IPSA but there is no evidence to support this.
28. The Contingency Panel expressed some concern there had been changes in guidance in previous years, which supports the MP’s position that the guidance had changed and was confusing.
29. The contingency panel ruled out this could be considered as a prepayment on the grounds the goods were both ordered and received in March 2021. The question of prepayments can only be applied to services purchased and not goods.
30. It is clear the items were purchased to be used by two new staff members in June 2021. The issue is the items were not listed on the end of year form. The MP’s position is this is because they were given the incorrect advice by IPSA.

31. The account manager agrees they were advised not to enter the expenditure on the end of year form as this would be done for them by IPSA (referring to accruals which were to be costed to the 2020/21 budget).
32. The compliance officer is of the view, this was a case of a genuine misunderstanding. The items were bought in good faith with a genuine belief they would be costed to the 2021/22 budget.
33. Based on the information considered by the contingency panel, they correctly applied the guidance and rejected the application on the basis the expenditure is costed to the year the expenditure is incurred.
34. The only consideration is whether in the circumstances, the contingency panel could have exercised discretion when considering the application. *The Scheme at para 10.10 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.*
35. The term "exceptional circumstances" is not defined and so the compliance officer used the dictionary meaning of exceptional which can be defined as much greater than usual. The MP ordered the equipment when he did to avoid possible delays in supply due to covid restrictions. If he had ordered the items on 1st April, this issue would not have arisen. There was no benefit to the MP and the compliance officer accepts his position when he states he genuinely believed the expenditure would come out of his 2021/22 budget.

36. The MP could have taken action to avoid the circumstances which gave rise to the expenditure by ordering the items in April as opposed to March. Had he realised, the position with regards to a change of policy, that this could not be considered as a prepayment, there is no doubt he would have. There was a significant amount of contact between the office manager and IPSA and it is clear from the content of the phone calls, the OM sought advice regularly to avoid and overspend on the office budget.
37. The third area to consider is whether the MP's performance or parliamentary functions will be significantly impaired by a refusal of the claim. The MP has made it quite clear that adverse publicity in relation to an overspend could have quite serious consequences to him reputationally in his local constituency and cause an adverse reaction. In his letter to the compliance officer, he wrote:

"Aside from the potential financial implications of this, the greatest concern arising from this is the potential backlash from the public, and the effect that this will have on the mental health and wellbeing of my team, particularly my OM".
38. On reviewing the minutes of the contingency panel. There does not seem to be any consideration of the above points or any discussion around whether discretion could have been exercised in this case. The discussion was centred around whether policy and process were applied correctly, and the panel decided that it was not and rejected the claims on those grounds.
39. The compliance officer has no grounds to alter the determination made by the contingency panel because they correctly applied the year end guidance for 2020/21. She can, however, make a request that this matter is considered again by the contingency panel based on additional evidence being provided by the MP and that identified as part of the review and ask the panel to consider the question of discretion.
40. The compliance officer requests that the contingency panel considers the following points:

- The MP made the transaction on his payment card in the genuine belief the expenditure would come out of his 2021/22.
 - The above would have afforded with year-end guidance in 2019/20 and could have been considered a prepayment.
 - Whether IPSA feel the communications changes to year end guidance and other support offered is sufficient.
 - The office manager was advised not to record payment card expenditure on the year end form and so the MP was denied the opportunity to reason with IPSA why the expenditure could be transferred to 2021/22 budget. The year end guidance states “Any claims you make up to and including 31 March 2021 will be allocated to the 2020-21 financial year unless you ask us, on the year-end form, to move the costs to 2021-22 (you will need to include evidence on the year-end form that the cost relates to goods or services to be received in 2021-22)”.
 - There was no benefit to the MP in making this purchase at the time he did other than to try and overcome delays in supply because of the covid pandemic.
 - The contingency panel acknowledged there was some confusion caused by the change to year end guidance.
 - The reputation of the MP and his office manager may be affected by the publication of an overspend and have professional and personal consequences for them.
41. 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>.
42. 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.

Update 4th January 2022

The CEO and his team agreed to allow the overspend to be taken forward to the 2021/22 budget on the basis of a misunderstanding of the rules.

Tracy Hawkings

Compliance Officer