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

Gareth Snell.
Former Member of Parliament for Stoke-on-Trent Central.

Final Report.

Tracy Hawkings
Compliance Officer for IPSA
July 2020

Introduction

1. This review has been conducted following a request by Gareth Snell, the former MP for Stoke-on-Trent Central, to consider a decision of the IPSA contingency panel process to refuse to pay the cleaning 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 Snell applied to the Contingency Panel at IPSA on 21st April 2020. The case he presented, was that there was a stipulation in his lease agreement to have an end of tenancy deep clean and carpet clean 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 14th May and rejected on the grounds that IPSA are not responsible for any cleaning costs associated with an MP's residential accommodation.

6. As Mr Snell's application was not upheld, he made a request to the Compliance Officer to conduct a review on 5th 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 Snell.

The Review

10. In conducting the review, the Compliance Officer has utilised the eighth edition of the Scheme as this was the edition in force when Mr Snell was elected as an MP. 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 Snell.
- ◊ 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 agreement and service costs.

The Basis for the Review request by Mr Snell.

12. As previously stated the claim subject of this review relate to the costs for a deep clean and carpet clean at the property in London leased by Mr Snell. This was a stipulation in the terms and conditions in his lease agreement. At the time Mr Snell entered in to the rental agreement in 2017, he was the Labour MP representing the Stoke-on-Trent Central 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 Snell 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 Snell's landlord arranged for the property to be deep cleaned and for the carpets to be steam cleaned at a total cost of £280.00. The money was deducted from the deposit money taken at the beginning of the tenancy.

16. Mr Snell made an application to the Contingency panel to be reimbursed for the sum of £280. It was not part of his application but Mr Snell had previously informed IPSA that a fellow MP, who leased a property in the same block of flats and was subject of a similar leasehold agreement had been reimbursed the costs of deep cleaning and carpet clean. This information has subsequently been verified by the Compliance Officer.

17. Mr Snell's application was considered at the contingency panel and rejected. It was at this point he made a request to the Compliance Officer to conduct a review.

Position of IPSA

18. This matter was considered by the IPSA Contingency panel held on 14th May 2020. The panel rejected the application made by Mr Snell on the basis that, "cleaning of domestic properties is not allowed under the Scheme and is considered a personal cost. IPSA registers leases but does not approve/sanction the terms of MPs' leases".

Considerations by Compliance Officer.

19. In conducting this review, the Compliance Officer has to decide whether or not there are any grounds to overturn 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".

20. The guidance on the contingency panel process is set out in Section 10.11 (Eighth 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 8.9 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 4.10 Eighth 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 4.11).

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. There is no specific guidance within the "Scheme" which specifically refers to end of tenancy cleaning costs.

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 4.7 of the "Scheme" which states "IPSA will approve all rental contracts to ensure the eligibility criteria and conditions are met before any claims can be made. MPs should satisfy themselves that the conditions as set out in the Scheme are met".

26. The Compliance Officer has conducted research on the subject of whether or not a deep clean of a property 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]

27. The Compliance Officer is of the opinion that as IPSA approved the tenancy agreement submitted by Mr Snell and the tenancy agreement contained a clause that there had to be an end of tenancy deep clean, and cleaning costs can be consider as a service charge, then IPSA should be liable for the costs.

28. The Compliance team researched whether or not cleaning costs had been paid to other MPs who lost their seats in the 2019 election and discovered that claims had been made and paid to three former MPs[4]. It is clear that there is some confusion on this matter which needs to be addressed by IPSA going forwards.

[3] Guidance contained within the leasehold advisory service

[4] IPSA are now trying to recover the costs which they consider were paid in error.

Conclusion

29. The Compliance Officer has adjudicated in favour of Mr Snell in this instance for the following reasons:

- ◊ IPSA approved the terms of Mr Snell's lease in 2017.
- ◊ The lease contained a clause which stipulated a deep clean was required at the end of tenancy.
- ◊ Cleaning costs can be considered as part of a general maintenance service charge if the costs are reasonable.
- ◊ The costs of £280 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 Snell 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 Recommendation

1. In the next edition of "The Scheme", IPSA may wish to consider including further clarity on the point regarding end of tennancy cleaning costs. A distnction should be made between general cleaning costs and an end of tennancy deep clean.

Tracy Hawkings

Compliance Officer for IPSA.

Appendix One – Representations from IPSA.

The Compliance Officer received a letter from the IPSA Chief Executive Officer on 17th July. Although IPSA accepted the overall findings of the review, they wanted some further explanation on some key points. The below is a summary of the information required and the response from the Compliance Officer.

IPSA

"You make a distinction between day-to-day cleaning (which I think you indicate should not be paid) and end-of-tenancy cleaning required in a lease (which is the cost incurred by Mr Snell). There is no such distinction in the Scheme, and paragraph 4.5 states that 'no claims will be paid' for cleaning MPs' accommodation. You're right that we have paid a few claims for end-of-tenancy cleaning in error, but in most cases, we have enforced this rule consistently, including with other MPs who left Parliament last December.

Compliance Officer Response:

I do not want to set precedence on this point and stipulate that all end of tenancy deep cleaning costs should be paid. Having said that, my personal opinion is that a distinction should be made between general cleaning costs and an end of tenancy cleaning cost which is a stipulation within a lease. If IPSA remain of the view that end of tenancy cleaning 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. As far as I can see, there is nothing within the rules that would prevent an MP claiming for the cleaning of a constituency office as long as there are sufficient funds within the budget. Neither can I see anything within Section 8 (Wind up costs) which would prevent this expense from being claimed.

I considered this particular case on its merit and ruled in Mr Snell's favour on the basis that:

- IPSA **approved** the lease in 2017 when edition 8 of the Scheme was in force. The Scheme at paragraph 4.7 stated clearly that "IPSA will pay for rent and associated costs only after it has approved the MP's rental contract, or has been provided with proof of ownership of the property". As a point of accuracy, this point is still within the most recent edition (Twelfth) of the Scheme at paragraph 4.21 and in all published versions of the Scheme published in the intervening years.

- The lease contained a clause that there should be an end of tenancy deep clean.

- Associated costs include service charges and general service maintenance costs, can include cleaning costs.

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”.

IPSA

“You also say that the cost should be paid because cleaning costs can be included in a service charge, which is an eligible cost. But Mr Snell’s evidence shows that the cleaning was not part of a service charge, but was carried out by a third party at the request of the landlord after Mr Snell had left the property. Nor did Mr Snell suggest that it related to a service charge. We can only assess claims on the basis of the evidence provided by the MP, so this might be worth making clear in your report”.

Compliance Officer Response:

Mr Snell’s case is that it was a clause within his lease contract which was approved by IPSA. The landlord commissioned the deep clean service as a stipulation of the lease. I made the decision that this could be included as an associated cost service charge. I acknowledge the point that this could be made clearer in my report.

The Compliance Officer wants to make it clear, that the decision to include “Deep cleaning costs” under the general heading of a service costs was hers based on the significant amount of research conducted on this point as opposed to the argument presented by Mr Snell in his application. It is the role of the Compliance Officer to consider the guidance as set out under the “Scheme”, but also to consider other wider sources of information, where appropriate.

"You also rely on references in the Scheme to 'approval' by IPSA of MPs' rental agreements. I realise this can be confusing for MPs. We ask for MPs' leases to be registered with us so that we can check that a legal rental agreement is in place. But we do not check every part of every contract, nor can we accept liability for all costs which might be incurred by the MP during the tenancy. It is the MP's responsibility to check the terms and conditions that they are sign up to. This is emphasised in paragraph 4.23 of the Scheme, which tells MPs to check for 'clauses which may lead to unexpected costs'. So, where we 'approve' the leases for registration, we do not agree to pay sums greater than those in the MPs' budgets, for example. We can make this clearer in our own guidance, but perhaps you could make this clear in your report too".

My Response:

I acknowledge the point that the Scheme" clearly stipulates that MPs are responsible for checking clauses in their contracts which may lead to unexpected costs. However, the "Scheme" does not say, those costs will not be paid. The "Scheme" needs to make it clear that if unexpected costs arise, they will not or may not be paid (depending on what they are). A more considered position might be that if unexpected costs arise and there are funds available within the accommodation budget, then consideration could be given to paying it. It must be remembered that both IPSA and MPs can consider the question of discretion. As a point of accuracy, the point around "Approval" of a lease is still within the most recent edition (Twelfth) of the Scheme at paragraph 4.21 and in all published versions of the Scheme published in the intervening years.

"Finally, on a more detailed point, in paragraph 25 of your report, you quote paragraph 4.7 of the Scheme. This wording appeared in the 8th (2016-17) edition of the Scheme, but the paragraph is no longer in force. I'd be grateful if you could not rely on this paragraph as the basis for the findings, on the grounds that we do not allow MPs either to rely on earlier editions of the Scheme to demonstrate that a cost should be paid".

My Response:

As stated earlier in my reply, this paragraph remains in force at paragraph 4.21 in the latest edition of the Scheme and is perhaps the reason why there is still confusion over this issue. I would recommend adding some clarity on the question of "Approval" or making it clear that IPSA simply register the leases (as they do with Constituency Office leases).

My position remains unchanged and I do believe Mr Snell should be reimbursed these costs.