

## Appendix B

### **Summary of the major changes to the Procedures for Investigations by the Compliance Officer for IPSA**

- a) The guidance box (noting that this is a change to guidance, not the Procedures themselves) headed **Decision whether or not to initiate an investigation** has been amended to in effect tidy up the drafting but making it clear that the circumstances listed in which the Compliance Officer may decide not to initiate an investigation are also subject to the overarching requirement that there is no other good reason to initiate an investigation.

The guidance box has also been amended to expressly afford the Compliance Officer the discretion to not initiate an investigation in circumstances where she considers that an overpayment has been inadvertent, the MP promptly repays and there is no other good reason to investigate. In practice, the situation sometimes arises that the Compliance Officer writes to an MP regarding an overpayment only for the MP to immediately acknowledge the overpayment as a mistake and apologise. Where the Compliance Officer is satisfied this was an inadvertent breach and there are no wider public interest learning points, it is considered disproportionate to serve an investigation notice and to follow the formal procedure through to its conclusion, incurring the costs (in terms of both time and expense) associated with that.

- b) The section headed **Notification of a decision whether or not to initiate an investigation** has been amended so that where the Compliance Officer decides that a request or complaint is not valid or not to initiate an investigation, she shall be required to send a copy of the notification of their decision to the MP concerned and IPSA unless there are exceptional reasons not to. Previously, the Compliance Officer had been required to send the notification to the person making the complaint or request for investigation but was only required to send the notification to the MP concerned and IPSA “*where appropriate*”. This is arguably not a major change, but is noted here nevertheless.
- c) Various time limits in the sections headed **Formal request for information, Representations/hearings in advance of Statement of Provisional Findings** and **Representations in advance of Statement of Findings**, that previously required actions to be taken in 5 or 15 working days have been amended so as to allow for the relevant actions to be taken within such period as the Compliance Officer may reasonably decide. The Act does not include mandatory time limits for inclusion in the Investigation Procedures and the Compliance Officer would benefit from greater flexibility to determine time limits appropriate in different circumstances.
- d) The section headed **Representations/hearings in advance of Statement of Provisional Findings** has been amended to provide greater clarity as to the time by when the Compliance Officer is required to have provided the MP concerned and IPSA with all material information received in order that the MP concerned and IPSA are able to make informed representations.

- e) The section headed **Representations in advance of Statement of Findings** has been amended so as to afford the Compliance Officer a discretion as to whether or not she shares representations received from an MP regarding the Statement of Provisional Findings with IPSA and invites IPSA to respond (or vice versa). Previously this exchange was mandatory. The Act does not require this “back and forth” and although it is sometimes of assistance to the Compliance Officer (for example where significant new evidence comes to light which requires comment) it is not considered to be necessary or desirable in every circumstance. This has on occasion in the past led to unnecessary delays in the process.
- f) Paragraph (a) in the guidance box headed **Circumstances in which Compliance Officer need not issue a statement of findings** has been amended so as to restrict the Compliance Officer’s discretion as to when she may determine not to issue a Statement of Findings, in line with the Act. Previously, the Compliance Officer had the discretion to not issue a statement of findings where (along with certain other conditions) the MP “accept[ed] the Compliance Officer’s provisional findings”. Section 9(8)(a) of the Act provides that the Compliance Officer may determine not to issue a statement of findings where the MP “accepts a provisional finding that the member was paid an amount under the MPs’ allowances scheme that should not have been allowed”. The previous drafting was therefore broader than the statute as, per the guidance, the Compliance Officer could determine not to issue a statement of findings where the MP accepted that they were or were not paid an amount under the MPs’ allowances scheme that should not have been allowed. Only the former is provided for in the Act.
- g) The section headed **Closure Report** has been amended so as to afford the Compliance Officer a discretion as to whether to include in a Closure Report details of any agreement by the MP concerned to repay any amount to IPSA and whether or not any amount has been paid. It is at the discretion of the Compliance Officer whether or not to publish a Closure Report and this change is merely as to the content if she decides to publish. This was considered an unnecessary restraint on the discretion of the Compliance Officer given the overall discretion whether or not to issue a Closure Report.
- h) The section headed **Publication** has been amended so as to expressly refer to the Statement of Review issued under section 6A(3) of the Act. The Act requires IPSA to determine procedures to be followed by the Compliance Officer as to the circumstances in which the Compliance Officer must publish statements under section 6A(3) of the Act. Previously this information was included in the **Guidance on the Conduct of Reviews by the Compliance Officer for IPSA**. It should have followed the consultation process and , as far as the Compliance Officer is aware, did not. Whilst these provisions as to publication of a review are not relevant to investigations under section 9, this is contained, for convenience, in the same document. In circumstances where section 9A(5)(a) of the Act requires the IPSA to determine procedures to be followed by the Compliance Officer as to the circumstances in which the Compliance Officer must publish statements under section 6A(3) of the Act, provision for the publication of statements under section 6A(3) of the Act should follow the consultation process and be included in a document that is clearly determined by IPSA (as opposed to where it is now in Compliance Officer guidance). This was a gap in the previous Procedures which will be hereby rectified.

- i) The Investigation Procedures include a guidance box headed **Guidance on Penalty Notices** at Annex A. Paragraph 9(1)(a) of Schedule 4 of the Act requires that the IPSA prepare guidance (not Procedures, and not subject to formal consultation) about the circumstances in which the Compliance Officer should impose a penalty under paragraph 6 of schedule 4 of the Act. This includes where an MP has, without reasonable excuse, failed to comply with a requirement under section 9(3) of the Act (provision of information to Compliance Officer) or to comply with any requirement contained within a repayment direction. There was no guidance on this point issued (in the third edition of the Investigation Procedures or elsewhere) and the proposed changes meet the statutory requirement.

The section of the **Guidance on Penalty Notices** headed **Failure to comply with a request for provision of information** has been amended to state that the Compliance Officer may decide not to issue a penalty notice where an MP has, without reasonable excuse, failed to comply with a requirement under section 9(3) of the Act (provision of information to Compliance Officer) in circumstances where the Compliance Officer considers: (1) that it would be unfair, inappropriate or disproportionate to do so; or (2) the MP's failure was inadvertent and he or she promptly provides the information that is the subject of the requirement under section 9(3).

The section of the **Guidance on Penalty Notices** headed **Failure to comply with a repayment direction** has been amended to state that the Compliance Officer may decide not to issue a penalty notice where an MP has, without reasonable excuse, failed to comply with any requirement contained in a repayment direction in circumstances where the Compliance Officer considers: (1) that it would be unfair, inappropriate or disproportionate to do so; or (2) the MP's failure was inadvertent and he or she promptly repays the amount due under the repayment direction.

- j) The Investigation Procedures include a guidance box headed **Guidance on Recovery of Overpayments** at Annex B. Paragraph 2(2) of Schedule 4 of the Act requires the IPSA to prepare guidance about whether the Compliance Officer should include a requirement to pay interest in circumstances where paragraph 1(3) of Schedule 4 of the Act applies (i.e. where an amount was paid under the MPs' allowances scheme that should not have been allowed which was wholly or partly the IPSA's fault). Previously, no such guidance was included. The Guidance now provides that where the Compliance Officer finds that the wrongful payment was wholly or partly IPSA's fault, the MP shall not generally be required to pay interest under the repayment direction.