



## Review of a determination by IPSA to refuse an expense claim

Mrs Nicky Morgan MP  
Member of Parliament for Loughborough

17<sup>th</sup> April 2018

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## Introduction

1. This review considers a claim Mrs Nicky Morgan MP submitted to the Independent Parliamentary Standards Authority (IPSA) for Accommodation Costs Expenditure under the *MPs' Scheme of Business Costs and Expenses* (the Scheme). The claim was made on 27<sup>th</sup> March 2017 and was paid by IPSA.
2. The claim was processed at the end of the financial year 2016/17, and was for legitimate expenditure due in the 2017/18 financial year. As such, Mrs Morgan was informed by IPSA that due to an overspend on the 2016/17 budget, a repayment was required.
3. On 11<sup>th</sup> September 2017, Mrs Morgan contacted the Compliance Officer for IPSA to request a review of the decision by IPSA to require the 2016/7 overspend to be repaid.
4. The role and remit of the Compliance Officer for the Independent Parliamentary Standards Authority (**IPSA**) was established by the Parliamentary Standards Act 2009 (**PSA**).
5. The Compliance Officer has two primary functions, as set out in the PSA: Investigations (under section 9); and Reviews (under section 6A).
6. *Section 6A of the Parliamentary Standards Act 2009* (the Act) provides that if:
  - (1)(a) *the IPSA determines under section 6(3)<sup>1</sup> 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.*
7. 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*

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<sup>1</sup> 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.

*the determination that should have been made under the Scheme and in light of that, whether or not to confirm or alter it.*

8. The claim is numbered 578372 and is in the sum of £1627.96 and relates to a Council Tax payment for the 2017/8 period. The claim was authorised and paid at the time it was submitted for payment.
9. As stated above, the review relates to a request by IPSA for repayment of an overspend of £163.59 on the accommodation budget for 2016-7, following the end of year reconciliation.
10. Although Mrs Morgan did not formally request that IPSA conduct an internal review of their decision not to reallocate the claim from the 2016-7 budget to the 2017-8 budget, to which the expenses related, she did seek clarification from IPSA's Operations Manager.
11. Following IPSA's decision to reject Mrs Morgan's request to reallocate the claim from the 2016-7 budget to the 2017-8 budget, Mrs Morgan sought a review by the Compliance Officer of IPSA's decision.

## The Basis for the Review

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

*"On 22 June I was told by IPSA about an apparent overspend on my 2016/17 Accommodation Budget of £163.59 which I have been asked to repay.*

*This amount is for an entirely legitimate expenditure of council tax for the 2017/18 financial year incurred on my London flat.*

*The background is that I paid the full 2017/18 council tax on my IPSA credit card on 27 March 2017. I did this before I left London for the recess, because I knew that at least the first payment had to be made before 1 April 2017 and in previous years IPSA has increased the card limit for April to allow the annual amount to be paid.*

*I was informed that because there was not quite enough headroom for the whole council tax amount and because I has not filled in a form before 13 April requesting that the council tax should be allocated to the 2017/18 year end I therefore owed the excess to IPSA.*

*I would like to dispute the fact that I owe any amount to IPSA for the following reasons:*

1. *This is a new year-end guidance system and clearly there are wrinkles. An IPSA e-mail summary sent out on 19 January 2017 says, 'All eligible claims submitted after 13 April, and within the 90 day period, will still be paid, but will be deducted from your 2017/18 budgets.'*

2. *My IPSA payment card reconciliation for April 2017 (consisting of just the council tax amount) was not requested by you until 28 April 2017 and was submitted by me before the May deadline but, importantly after 13 April."*

## The Review

13. In conducting the review, the Compliance Officer has utilised the Eighth Edition of the Scheme and, in addition, has consulted the following:
  1. Validation Notes – notes appended to a claim submitted by an MP by the IPSA.
  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 Mrs Morgan's argument is that this was an honest mistake and the claim was for an entirely legitimate expense, claimable under the Accommodation budget.

### 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]*

16. Mrs Morgan has stated that the amount is for an entirely legitimate expenditure of council tax for the 2017/18 and she could not have known about the overspend until after the deadline (13<sup>th</sup> April 2017) for submitting a request for a payment to be transferred to the next financial year, due to the payment mechanism.
17. IPSA maintain that they clearly provided guidance to all MPs on the end of year accruals procedures. The guidance was highlighted to MPs on a number of occasions via correspondence, the IPSA Bulletin and financial statements. In respect of the 2016/17 year, IPSA 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.
18. 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. The year-end guidance was sent 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 Mrs Morgan. 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."*

19. 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'.

20. 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.

21. 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*.

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

a. IPSA payment card use for council tax, in relation to Mrs Morgan'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.

23. 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.
24. Thus, in the Compliance Officer's view, IPSA was correct in the terms of the Scheme in determining that Mrs Morgan's claim was not payable on the basis of a correct allocation of the expenses to the previous year's budget, leading the MP to be over budget.
25. It is the Compliance Officer's understanding, that the wording of the Scheme supports an interpretation that "claims" may in certain circumstances be treated as being made when expenses are incurred/transactions are complete. There is no reference in the Scheme to indicate that expenses are to be allocated to the year in which they relate, regardless of when actually incurred.

## Considerations

26. 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)."

27. Consideration should be given as to whether the IPSA exercised its discretion appropriately upon upholding its initial decision for Mrs Morgan when she complained about the treatment of the payments in question.

28. 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. Mrs Morgan 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).

29. 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'

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"*.

30. The Compliance Officer sought confirmation from IPSA's Policy team that should Mrs Morgan have formally requested an internal review, the decision not to reallocate the claims would have remained unchanged. IPSA's response was:

*"I can confirm that Mrs Morgan's case was not considered by the Contingency Panel. The Panel's purpose is to consider one-off, exceptional and/or unforeseeable costs which may warrant an uplift to an MP's standard budget; as well as costs which are outside of the Scheme rules but which an MP believes are necessary for carrying out their parliamentary role.*

*The cost in question in Mrs Morgan's case was none of those things. The cost for a full year's council tax was paid in advance at the end of March 2017. Mrs Morgan could have used the year-end form to move the cost into the 2017-18 financial year, in line with IPSA's year-end process and the guidance we produce for MPs. As she did not, this resulted in an overspend in Mrs Morgan's accommodation budget for 2016-17, which she was asked to repay.*

*We would certainly have considered the matter as a case for the Contingency Panel, if we believed at the time that it had any merit on that basis; Account Managers do regularly recommend to MPs that they should make an application where there may be a case for contingency funding. However, the cost itself was eligible under the Scheme, and there was no indication that there were exceptional or unforeseen circumstances. Colleagues in the MP Support team therefore did not suggest that the MP make an application to the Panel. Instead, as you are aware, the matter was escalated to an Operations Manager, in line with our normal processes."*

31. The Compliance Officer is satisfied that a 'contingency process' would not have altered any IPSA consideration of 'discretion' and that this approach was appropriate in the circumstances.
32. 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.

## Observations

33. 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.
34. 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"*.
35. 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.
36. This guidance in relation to the use of payment cards is clear, 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, Mrs Morgan's payment was not a "standard" claim and there clearly was some confusion as to the practicalities, particularly close to the recess period.
37. 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 Mrs Morgan. 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.

38. 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 Mrs Morgan 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.
39. The Accommodation Expenses for Mrs Morgan (incurred by IPSA payment card) are provided for within the Scheme. However, in practice the mechanics set out within the Scheme demonstrate, as argued by Mrs Morgan, that an MP using either of these payment methods will not have a timely method of knowing the details of the payment made (and against what budget IPSA has applied the payment). Mrs Morgan maintains that there was no way for her 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.
40. It may be that in practice, the payment cards 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

41. IPSA is correct in the terms of the Scheme in determining that Mrs Morgan's claim was not payable on the basis of a correct allocation of the expenses to the previous year's budget, leading the MP to be over budget.
42. 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 Mrs Morgan for the Accommodation Expenses is the determination that should have been made and is confirmed.
43. 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>.
44. 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.

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Amended by Tracy Hawkings  
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(13<sup>th</sup> June 2018)