



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

Owen Thompson MP  
Former Member of Parliament for Midlothian.

Final Report

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## Introduction

1. This review has been conducted following a request by Owen Thompson, the MP for Midlothian, to consider a decision of the IPSA contingency panel process to refuse to pay a council tax invoice which related to the MP's previous term of office (2015-2017).
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."<sup>1</sup>
3. The guidance which applies in this case comes under Chapters Four, Eight and Ten of the "The Scheme" (Eleventh Edition).
4. Mr Thompson was the MP for Midlothian between 2015 and June 2017 when he lost his seat. During this time, he rented a property in London for which he paid rent and associated costs including council tax. Mr Thompson was re-elected to office in December 2019, when it came to light there was an outstanding unpaid council tax invoice for 2017. Mr Thompson paid the invoice on-line with his MP Procurement card (Credit card). Mr Thompson was subsequently unable to reconcile the expense from his 2019/20 accommodation budget and was informed he would have to apply to the IPSA contingency panel to consider the request for payment.
5. Mr Thompson made an application to the IPSA contingency panel on 19/03/2020 and argued that the circumstances in his case was unavoidable as he had no idea the invoice was in existence until returning to office in 2019.
6. The case was heard at the contingency panel meeting on 26/03/20. The application was not approved and in light of this, Mr Thompson made a request to the Compliance Officer to conduct a review on 4<sup>th</sup> June 2020.
7. *Section 6A of the Parliamentary Standards Act 2009* (the Act) provides that if:

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<sup>1</sup> The Scheme of MPs' Business Costs and Expenses (Eleventh edition – Introduction).

(1)(a) the IPSA determines under section 6(3)<sup>2</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.

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 Thompson.

### The Review

10. In conducting the review, the Compliance Officer has utilised the eleventh edition of the Scheme.

11. In addition, the Compliance Officer has conducted the following enquiries:

- ◇ Reviewed the contingency panel application submitted by Mr Thompson.
- ◇ Reviewed the minutes of the contingency panel meeting which considered the application.
- ◇ Reviewed the notes held on the IPSA case records management system.
- ◇ Sought additional information from Mr Thompson.
- ◇ Conducted open research in relation to Kensington and Chelsea local authority
- ◇ Sought additional information from the Business World expense system.

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<sup>2</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 Basis for the Review request by Mr Thompson.

12. As previously stated, the application subject of this review, relates to a council tax invoice for a property in London which was rented by Mr Thompson between 2015 and 2017. The sum of money subject of the application was £550.18p covering the period July and August 2017.
13. When Mr Thomson lost his seat in the June 2017 election, his parliamentary e mail account was deactivated. The council tax invoice, subject of this application was sent to Mr Thompson via his parliamentary e mail address after the period his e mail account was no longer accessible to him or his staff.
14. The outstanding invoice came to light following Mr Thompsons re-election to office in December 2019 and his e mail account being re-activated. Mr Thomson has provided evidence to the Compliance Officer that he received an e mail from the Royal Borough of Kensington and Chelsea (RBKC) Council tax services on 18<sup>th</sup> December 2019 demanding the invoice be paid.
15. Mr Thompson paid the invoice via the RBKC's online payment system with the use of his MPs procurement card. During the subsequent reconciliation process, his claim was disallowed on the basis that the invoice related to his 2017 accommodation budget which was no longer available. He was advised to apply to the contingency panel.
16. Mr Thompson applied to the panel on 19<sup>th</sup> March 2020. The case he presented was that he had only recently become aware of the outstanding invoice as it had been sent to his deactivated e mail account following the loss of his seat in 2017. He had not previously seen the invoice or been able to access it and had paid it as soon as the matter came to light. The invoice was paid with his General Procurement Card in December 2019.
17. In his application, Mr Thomson was seeking permission to reconcile the payment to his 2017 budget or if that was not possible be given funds from the contingency budget.
18. In additional information provided to the Compliance Officer as part of the review, Mr Thompson has stated he knew when he lost his seat in 2017 that all final invoices should be settled from the

winding up budget. He left his trust in a staff member who acted as his proxy to do this on his behalf. As far as he was aware, all of his invoices had been paid.

19. Mr Thompson believes the circumstances which gave rise to the unpaid invoice were unavoidable.

#### Position of IPSA

20. This matter was considered by the IPSA Contingency panel held on 26<sup>th</sup> March 2020. The panel rejected the application made by Mr Thompson on the basis “the Panel noted that it is the MP’s responsibility to ensure that costs they incur in carrying out their parliamentary functions are paid on time, and claimed within 90 days, as set out in the Scheme”. The Panel did not deem the circumstances described in the application to be exceptional, and therefore they do not meet the criteria for contingency funding.

21. The minutes of the Contingency panel meeting, however do acknowledge the following “The claim is clearly outside of 90-days, but might be considered **unavoidably so** given that the MP lost access to his parliamentary account”. However, the panel ultimately decided the MP is accountable for submitting claims in time, no matter how they are delivered.

#### Considerations by Compliance Officer.

22. In conducting this review, the Compliance Officer has to decide whether or not there are any grounds to overturn the decision or part of the decision of the contingency panel.
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. The Compliance Officer believes there are other areas of the Scheme which are relevant and need to be considered in this case. These are listed in appendix one to this report.
25. The Compliance Officer has to consider all three stands at paragraph 23 above and any other relevant sections as outlined in the Scheme.
26. To take each point in turn, the dictionary meaning of the word “exceptional” is “unusual” or “not typical”. Mr Thompson argues that his circumstances were exceptional on the basis that as his parliamentary e mail account was deactivated soon after he lost his seat in June 2017, he had no idea there was an outstanding amount owed for council tax. In addition, he had relied on his office staff to reconcile all outstanding debts during the wind-up period and this had not been done in relation to the council tax invoice.
27. The Compliance officer has established that MPs parliamentary accounts remain active for about ten days after they lose their seats. Thereafter, an out of office message is left in place for a further 80 days letting people know the MP is no longer in office. The out of office message is a standard message and does not provides any further information.
28. The Compliance Officer is willing to acknowledge the circumstances were exceptional, in that the notification from RBKC of the outstanding debt was not received by the MP by means of his parliamentary e mail account. In addition, if the notification had been backed up by letter, to the relevant address, occupancy had been relinquished by 02/08/2017.
29. The next strand to consider is whether or not the MP could reasonably have been expected to take any action to avoid the circumstances which gave rise to the expenditure or liability. The MP could not have avoided the circumstances which gave rise to the expenditure because council tax had to be paid up until the time occupancy was relinquished. The invoice was for the period July to August 2017. Mr Thompson could not have avoided the expenditure; however, he is accountable and ultimately responsible for ensuring all outstanding invoices are paid during the wind-up period. Mr Thompson has stated, he relied on his office staff to do that on his behalf,

which is normal practice for most MPs. However, it must be considered that Mr Thompson's staff would not have had access to the e-mail account either and would not have realised there was an outstanding invoice to be paid. The Compliance Officer is willing to accept this was a genuine oversight on the part of those involved.

30. The third strand which needs to be considered is whether or not an MP's parliamentary functions will be impaired if the claim is not settled. This is a difficult test to satisfy in this case and many other cases. If the money is not made available to Mr Thompson by IPSA, it will affect him from a personal point of view in that he will be liable for the debt, but it is difficult to envisage how this would impair his parliamentary function.
31. At the time, the expense was incurred, this strand would not have been relevant as Mr Thompson had lost his seat and so cannot be taken into account.
32. The Compliance Officer has attempted to establish how Mr Thompson's office had paid council tax invoices during the 2015/17 period as it would have been helpful to know if they had been set up by means of a direct debit or were paid with the use of the general procurement card. Neither the MP or IPSA has been able to answer this question due to both the passage of time and the fact that IPSA has changed the expense system process.
33. The Scheme clearly says that in usual circumstances all claims have to be made within 90 days of the expenditure occurring. However, this case is slightly different as the invoice should have been submitted during the wind-up period which is a two-month period which starts the day after the MP loses their seat.
34. The contingency panel have argued, it is the responsibility of MPs to ensure all claims are submitted within the set timescales. However, the Compliance Officer believes it is difficult to apply this rule in a case where an MP is unaware of the existence of the invoice for the reasons outlined earlier in this report.
35. The expense was an eligible expense, the issue in this case is that it was submitted after the permitted timescales. If it was a case simply of a late submission, the Compliance Officer would have agreed with the findings of the contingency panel. However, the reason why the invoice was submitted some two years late was because this was the first time Mr Thompson became aware of its existence. He gave delegated responsibilities to his office proxy to settle all of his affairs

during the wind-up period, but due to the delivery notification of the invoice, they too, were unaware of its existence. In considering all of the facts, the Compliance Officer believes IPSA should be liable for the expense.

36. If it is possible, the claim should be reconciled with Mr Thompson's 2017 budget. If this is not possible then the contingency budget should be used.

### Conclusion

37. The Compliance Officer has concluded that the determination of the IPSA contingency panel was incorrect in respect of their decision not to approve Mr Thompson's application to cover the costs of a council tax invoice due to a late submission. This decision is made on the basis that Mr Thompson was unaware the invoice had been sent due to the fact his parliamentary account had been deactivated.
38. Prior to concluding the review, the Compliance Officer sent a copy of the provisional findings to both Mr Thompson and IPSA offering them the opportunity to make representations. The Compliance Officer received **representations** from IPSA which are recorded in **appendix two** of this report.
39. 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>.
40. 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.

Recommendations

None

Tracy Hawkings

**Compliance Officer for Ipsa**



## Appendix One – Relevant Areas of the Scheme

### **Para 8.2**

The winding-up budget is available to former MPs following a general election either because they have not stood for election, or because they have lost their seat at the election. It is also available to those who cease to be MPs during a Parliament.

### **Para 8.3**

Former MPs may claim for winding-up costs incurred for a maximum of two months. For former MPs who either stand down or lose their seats at a general election, this two-month period starts from the day after the election. For those who cease to be MPs during a parliament, the winding-up period starts on the day after the seat is vacated.

### **Para 8.4**

IPSA may make provision to extend the winding-up period beyond two months in exceptional circumstances or in the event an MP has been recalled and is contesting a by-election to return to Parliament.

### **Para 8.8**

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.

### **Para 10.8**

MPs may apply to IPSA for a contingency payment, under the following circumstances: a. where they have incurred a cost, or liability for a cost, which is not covered by the Scheme, but which they consider to be in support of their parliamentary functions; b. where their spending under a particular budget has exceeded or may exceed the budget limit for the year and they consider this to be the result of exceptional circumstances.

### **Para 10.10**

IPSA may decide to accept or reject an application under paragraph 10.8 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.

### **Para 10.19**

In addition to any other payments or assistance provided by this Scheme, IPSA may, at its discretion and on an individual basis, provide any additional financial assistance to MPs it deems necessary to assist them in carrying out their parliamentary functions.

## Appendix Two – Representations from IPSA

Letter received 12<sup>th</sup> August

“ Thank you for your email of 30 July with the findings of your review of claims from the former MP Owen Thompson relating to an unpaid council tax invoice for £550.18 dating back to 2017.

We will reimburse Mr Thompson the £550.18 as per your conclusion. However, we wish to put on record points relating to your decision firstly on what should and should not be an MP’s responsibility when managing their budgets of public money, and secondly on what might be considered exceptional circumstances and therefore a legitimate claim on IPSA’s contingency funding.

### Responsibility

IPSA’s fundamental principles and the Scheme of MPs’ Business Costs at paragraph 1.2 stipulate that each MP is personally and legally responsible for the budgets they are given by IPSA. Some MPs delegate the management of their budgets to staff; others prefer to manage their finances themselves.

As you know, some MPs manage their budgets better than others. Indeed, some MPs make mistakes and over-spend their budget or inadvertently make purchases outside the rules. This is unfortunate. But IPSA has been reluctant to accept explanations from MPs along the lines of “Sorry; I didn’t know”. Such arguments are rarely accepted by the courts (or by HMRC) when defendants claim they weren’t aware of the law.

IPSA establishes and publicises the rules in the Scheme. We expect MPs to understand the rules when making claims, or to ensure that their staff do, if these tasks are delegated, as was Mr Thompson’s case. He relied on his staff to comply with the rules. You note at paragraph 34 of your report that Mr Thompson said he was unaware of the invoice concerned. But he still remained responsible. I am similarly accountable to parliament for all IPSA’s expenditure, regardless of whether I have approved each invoice.

My concern is that your decision here opens the way for an MP simply to claim that they were unaware of a disputed invoice so that it can be paid by IPSA. We have rejected many claims where the MP alleged that they were unaware of a receipt. Some MPs claimed ignorance during the 2009 expenses scandal too.

### Exceptional

I would also argue again that the circumstances involved were not exceptional. MPs know that theirs is a precarious employment, and that elections take place regularly, sometimes unexpectedly. Mr Thompson regrettably lost his Midlothian seat at an unplanned election in 2017 on an 11 per cent swing to Labour. But he himself had won the seat in 2015 on a 23 per cent swing to the SNP. He cannot have been unaware of the intrinsic risk of a political career.

Thus, it cannot be considered exceptional that an election took place, nor that he would then need to wind up his financial affairs on leaving office. This involves moving out of a rented property and tying up all loose ends, including any outstanding council tax which itself is a regular and not an unanticipated bill. We therefore consider it reasonable that MPs departing Parliament take appropriate steps to pay outstanding bills, or to delegate the effective performance of this task to their nominated staff.

Nor do we accept that it should be considered exceptional that staff did not have access to their parliamentary email accounts. We have lobbied the House of Commons to ensure that these accounts stay open longer, as we recognise their early closure causes problems. But many former MPs use email forwarding facilities or out-of-office messages, so that any outstanding business can be concluded. And the fact that former MPs’ parliamentary email accounts are closed cannot be considered exceptional or unexpected either.

We therefore remain of the view that the circumstances were not exceptional and that it was reasonable to expect the MP to take responsibility to ensure his council tax bills were paid at the time he left his IPSA-funded accommodation.

Finally, on a technical point, your report refers to the accommodation and winding-up budgets, but the Scheme states at paragraph 8.8 that accommodation costs for departing MPs come from the contingency budget”.

### **Compliance Officer response**

#### **Point One – Responsibility**

The Compliance Officer agrees with IPSA on this point. The Scheme clearly sets out that MPs are accountable and responsible for managing their budgets, which includes ensuring that claims are made within 90 days of the date the expenditure occurred. The Compliance Officer, rightly or wrongly, has taken a more lenient view in this case. This is clearly a genuine oversight and the council tax was not paid because the invoice was not received due to the fact the MPs parliamentary e mail account had been decommissioned and he had moved out of the premises.

IPSA make a point, that ignorance of the law is not a defence. The Compliance Officer is well aware of this precedent. This is not a case where Mr Thompson was unaware of the rules as set out under the Scheme (the law) and the obligations placed on him, it was a case that he was unaware of the existence of a bill. The law does allow for circumstances where ignorance of a fact can be used as mitigation towards a defence. There is no information available to suggest to the Compliance officer that Mr Thompson either deliberately or wilfully failed to submit the invoice to IPSA on time and has ruled in his favour on this occasion.

Exceptional

IPSA make the point they do not believe the circumstances were exceptional in this case and Mr Thompson could have foreseen the General Election. They further argue, he should have ensured he tidied up his affairs and ensured all bills were paid. They do not believe, the closing down of an e mail account amounts to an exceptional circumstance and the MP could have mitigated against this by placing a forward address on his parliamentary account.

The Compliance Officer does not take issue with any of the points made by IPSA. The Compliance Officer has looked at this case in context. Whether or not, Mr Thomson foresaw the calling of a General Election in which he lost his seat is almost an irrelevance and in fact he did not argue this to be a part of the “exceptional” circumstance and neither did the Compliance Officer. The exceptional circumstance was looked at from the point of view, the bill was not delivered due to circumstances which arose from the General Election. IPSA acknowledged that the early closure of MPs e mail accounts has caused problems, so much so, they have lobbied the House of Commons to keep the accounts open for longer.

The Compliance Officer made an enquiry about this very point and was provided with the below information:

“They (the MP) would have access to it (e mail) for approximately 10 days after their loss so they could copy data. The email address would then have access locked with an out of office for a further

80 days letting people know they are no longer an MP, and the ex-MP would not have access during this time”.

The Compliance Officer accepted the information provided by Mr Thompson on the basis that confirmation was received, that the invoice for the council tax was sent after his e mail account has been closed. The MP could have placed a forwarding address on his out of office, but the fact that he did not do so, does not mean, in the opinion of the Compliance Officer, this is not an “exceptional” circumstance. This is a case where IPSA and the Compliance Officer differ on this particular point taking the circumstances in to account.

It does not open the floodgates up for other MPs to apply the same argument IE I did not know an invoice existed. Each case is based on the facts presented. Mr Thompson was able to demonstrate to the Compliance Officer that he was genuinely unaware of the existence of the unpaid invoice. It could be argued that he should have realised, the council tax bill had to be paid after such times, he moved out of the premises. The fact remains, he did not realise and the Compliance Officer is willing to accept this was a genuine oversight on this occasion.