

PROCEDURES FOR INVESTIGATIONS OF THE COMPLIANCE OFFICER FOR IPSA

CONSULTATION – OCTOBER 2011

CONTENTS

CHAPTER ONE: INTRODUCTION.....	2
CHAPTER TWO: ASSESSING COMPLAINTS	3
CHAPTER THREE: PUBLICATION OF INVESTIGATIONS	4
CHAPTER FOUR: OTHER PROPOSALS	5
ANNEX A: CURRENT EDITION OF THE PROCEDURES	6
ANNEX B: FLOWCHART OF PROPOSED PROCEDURES	14

CHAPTER ONE: INTRODUCTION

1. The Independent Parliamentary Standards Authority (IPSA) is a statutory body established by the Parliamentary Standards Act 2009 to devise and administer a regime for reimbursing MPs for expenditure incurred in the performance of their parliamentary functions. The MPs' Expenses Scheme ("the Scheme") came into effect on 7 May 2010. The Third Edition of the Scheme came into effect on 1 April 2011.
2. The Compliance Officer is a statutory office holder created by the Constitutional Reform and Governance Act 2010 ("the Act"). One of the Compliance Officer's functions is to investigate circumstances where he or she has reason to believe that an MP may have been paid an amount under the Scheme that should not have been paid.
3. The Act requires IPSA to provide the Compliance Officer with procedures to follow when conducting these investigations, and sets out the investigatory powers available to the Compliance Officer. In July 2010, following a public consultation, IPSA published the Procedures for Investigations of the Compliance Officer. These are attached in Annex A.
4. Creating a new set of Procedures inevitably required assumptions about how they would work. These Procedures have now been in force for a year, resulting in a body of experience about how they are operating in practice. The time is therefore right to review the Procedures to ensure that they are effective for the long-term.
5. As part of this review, IPSA must consult with the Compliance Officer, the Leader of the House, the Speaker of the House, and with the Committee on Standards and Privileges. IPSA has also decided to consult publicly. This consultation document sets out IPSA's proposals to amend the Procedures, and invites comment on these. It also includes, in Annex B, a flowchart representing how the Procedures would work if the proposals were adopted. Once the consultation is closed, IPSA will analyse the responses and use them to decide whether and how to amend the Procedures. New Procedures will be published in January 2011.

How to respond to this consultation

6. This consultation runs from 11 October 2011 to 25 November 2011. Please ensure that you send your response before the closing date as responses received after 25 November 2011 may not be considered.
7. The responses will be published in full, including the identity of the respondent, unless the respondent indicates otherwise. IPSA will also publish its analysis of the responses.
8. IPSA asks for emailed responses if possible, to:
complianceofficerconsultation@parliamentarystandards.org.uk.
9. Please mark the email with the subject "Compliance Consultation Response". Responses should be in plain or rich text format, with as little use of colour or logos as possible. If you do not have access to email, you may send a paper copy of your response to:

Compliance Consultation Response, Independent Parliamentary Standards Authority, 7th Floor, Portland House, Bressenden Place, London SW1E 5BH

CHAPTER TWO: ASSESSING COMPLAINTS

10. The current Procedures for Investigations of the Compliance Officer mandate a three-stage investigations process:
- a. An initial assessment: the complaint¹ is assessed to establish whether it falls within the Compliance Officer's regulatory remit.
 - b. The Preliminary Investigation: where, following the initial assessment, the Compliance Officer considers that an MP may have been paid an amount that should not have been allowed, a Preliminary Investigation is opened to examine the circumstances.
 - c. The Substantive Investigation: if, following the Preliminary Investigation, the Compliance Officer has reason to believe that an MP has been paid an amount that should not have been allowed, a Substantive Investigation is opened. The Compliance Officer may then use the information-gathering powers provided in the Act, and make provisional and, if appropriate², determinative findings on the matters under investigation.
11. This three-stage process has led to confusion about the purpose of each stage and about when an investigation, as defined in the Act, begins. IPSA proposes to replace the initial assessment and the Preliminary Investigation with one Assessment stage. The Substantive Investigation would then become the Investigation. Under these proposals, every complaint received by the Compliance Officer would be subject to an Assessment. The Assessment would have two purposes:
- a. To enable the Compliance Officer to take an informed decision about whether he or she has reason to believe that an MP may have been paid an amount under the Scheme that should not have been allowed.
 - b. To enable the Compliance Officer to decide whether to open an Investigation.
12. When conducting the Assessment, the Compliance Officer would be able to draw on his or her own records and any relevant publicly available information (such as the claims published by IPSA), and to ask for information from the complainant, if appropriate, IPSA and the MP.
13. Under the Act, the Compliance Officer may decide not to open an investigation if he or she considers it would be disproportionate. In this case, IPSA proposes that the Compliance Officer should inform IPSA of his or her decision. IPSA may, in appropriate cases, review its decision to pay those claims. Any alteration in the status of a claim would be published by IPSA.

Consultation Question

A: Do you agree that the initial assessment and Preliminary Investigation should be streamlined into one Assessment stage?

¹ This includes complaints from the public or other individuals, referrals from IPSA to the Compliance Officer and matters identified on the Compliance Officer's own initiative.

² The Act provides that the Compliance Officer is not obliged to go beyond making provisional findings where the MP accepts repayment of funds is due and repays them.

CHAPTER THREE: PUBLICATION OF INVESTIGATIONS

14. The current Procedures require the Compliance Officer to publish both the name of the MP and the matters under investigation at the point when a Substantive Investigation is opened. The Compliance Officer has discretion, in individual cases, to defer or withhold publication of these details if he or she considers it appropriate to do so.
15. IPSA considers the need for transparency and openness in the activities of the Compliance Officer to be a persuasive argument for retaining the presumption that these details will be published (unless there are good reasons not to). The question then becomes: when should they be published?
16. The arguments are finely balanced as to when to publish details of an investigation. Publishing the name of the MP at the start of the investigation avoids speculation about whether an investigation, which is a matter of public interest, is underway. However, media speculation may result in an MP being 'accused' of wrongful expense claims before a full and fair investigation is completed. Conversely, the Compliance Officer could release the name of the MP at the point when the Compliance Officer publishes his Provisional or Determinative Findings³. This would be at the conclusion of an investigation, and would ensure that the full facts and findings are made known at the same time as the details of the investigation. Publication at the conclusion of the investigation would therefore respect the need for transparency and prevent speculation that might unfairly impact on Compliance Officer's investigation or the MP's reputation⁴.
17. Other options include leaving the decision when to publish details of an investigation in each case to the Compliance Officer, although this could lead to different approaches being taken in different investigations. Finally, IPSA could require the name and expense type only to be published at the start of the investigation, and details of the actual expense(s) investigated at the conclusion.

Consultation Question

B: When should the Compliance Officer publish the name of an MP and details of a matter under investigation?

³ Depending on whether the Compliance Officer makes determinative findings – see footnote 2.

⁴ There may be a circumstance where the Compliance Officer does make details of the investigation known earlier, such as if he or she holds a public hearing during the course of the investigation.

CHAPTER FOUR: OTHER PROPOSALS

18. IPSA proposes a number of minor changes to the Procedures in order to improve their clarity and streamline processes. These proposals are below.
- a. Make explicit in the Procedures the requirement that where the Compliance Officer exercises his or her discretion, it is done lawfully, fairly and proportionately. This mirrors the inclusion of such a provision in the latest edition of the Scheme, relating to the exercise of MPs' discretion.
 - b. Make clear that the Compliance Officer may decide not to open an investigation on the ground that to do so would be disproportionate.
 - c. Clarify that where the MP under investigation or IPSA are asked formally by notice to provide information to the Compliance Officer for the purpose of an investigation, this information must be provided in writing.
 - d. Introduce timeframes for various stages of the investigation, including 15 working days for the MP and IPSA to make representations to the Compliance Officer, and five working days for the Compliance Officer to share those representations with the other party.
 - e. Re-order the Procedures relating to hearings to make clear that these are distinct from meetings held during the investigation. A hearing is a formal mechanism to make representations about the Compliance Officer's provisional findings.
 - f. Make clear that the Compliance Officer will only call a hearing if the MP agrees that is the best way for his or her representations to be made.
 - g. Include in the Procedures the legal framework relating to Repayment Directions, which may be issued in the event that the MP rejects a provisional finding that he or she must repay funds to IPSA. While these provisions have always been set out in the Act, it will bring clarity to the investigative process for them to be included in the Procedures.
 - h. Make explicit that where during the course of an investigation a new matter comes to light that may also require examination by the Compliance Officer, he or she can decide either to open a new investigation, or bring the new matter into the current one.

Consultation Questions

C: Do you agree with these proposals?

D: Are there any other changes that you think should be made to the Procedures for Investigations of the Compliance Officer?

ANNEX A: CURRENT EDITION OF THE PROCEDURES

Procedures for Investigations of the Compliance Officer

1. These procedures apply to an investigation conducted by the Compliance Officer to determine whether a Member of the House of Commons may have been paid an amount under the MPs' Expenses Scheme (entitled "The Expenses Rules") that should not have been allowed. A Glossary will be found at paragraph 45.

Initiating an investigation

2. An investigation may be conducted:
 - a. on the Compliance Officer's own initiative;
 - b. at the request of IPSA;
 - c. at the request of the MP concerned; or
 - d. in response to a complaint by an individual.
3. The Compliance Officer shall not normally commence an investigation more than 12 months after the claim in question was paid to the Member concerned unless, in the opinion of the Compliance Officer, exceptional circumstances justify commencing the investigation after more than twelve months have elapsed.
4. For the purposes of paragraph 3, except where an investigation commences on the Compliance Officer's own initiative, an investigation shall be regarded as commencing when the Compliance Officer receives a request or complaint from any of the persons specified at paragraph 2(b) to (d).

Requesting an investigation

5. Where a member of IPSA, the MP or another person requests the Compliance Officer to conduct an investigation, the request shall:
 - a. be made in writing on the approved standard form signed by the person making the request;
 - b. set out in detail the reasons why the person making the request considers that the MP should not have been allowed the amount in question;
 - c. be delivered to the Compliance Officer personally or by post to the Compliance Officer, IPSA, 7th Floor Portland House, Bressenden Place, London SW1E 5BH or by email to compliance@parliamentarystandards.org.uk.
6. Failure by a person to comply with these procedures when making a request to the Compliance Officer to conduct an investigation shall not be a bar to the Compliance Officer proceeding with an investigation.

Preliminary investigation

7. Paragraphs 8 to 12 shall apply in any case where it comes to the attention of the Compliance Officer that the MP may have been paid an amount under the Scheme that should not have been allowed.
8. The Compliance Officer shall notify the MP and IPSA that a preliminary investigation is to be undertaken to ascertain if there is reason for the Compliance Officer to believe that the MP may have been paid an amount under the Scheme that should not have been allowed.
9. For that purpose, in cases where a complaint or allegation about the MP has been made, the Compliance Officer may decide to reject the request for an investigation if:
 - a. the Compliance Officer considers the complaint to be trivial or vexatious;
 - b. the complaint does not relate to a claim by the MP for payment of an amount under the Scheme;
 - c. the complaint is about a matter that is time-barred under these procedures;
 - d. the complaint substantially repeats allegations that have already been the subject of an investigation by the Compliance Officer (unless there is significant fresh evidence material to the complaint); or
 - e. the complaint has been made anonymously, and there is no other good reason to investigate.
10. For the purposes of conducting the preliminary investigation the Compliance Officer may request information from any source that the Compliance Officer deems appropriate.
11. At the conclusion of the preliminary investigation the Compliance Officer shall write to the MP and IPSA and, if applicable, any person who requested the investigation, to inform them whether the Compliance Officer has reason to believe that the MP may have been paid an amount under the Scheme that should not have been allowed.
12. The Compliance Officer shall maintain a record of the preliminary investigation.

Substantive investigation

13. Paragraphs 14 to 16 shall apply where the Compliance Officer is satisfied that there is reason to believe that the MP may have been paid an amount under the Scheme that should not have been allowed.
14. The Compliance Officer shall notify the MP and IPSA and, if applicable, any person who requested the investigation, that a substantive investigation into the circumstances is to be conducted.
15. The notification to the MP shall include an outline of the matters that are to be investigated, in sufficient detail to enable the MP to understand the nature of the case to be answered.
16. The notification to IPSA shall include a copy of the outline given to the MP of the matters that are to be investigated.

Gathering information

17. The Compliance Officer may by notice require the MP and IPSA to provide:
 - a. information in the form of a written statement; or
 - b. any documents in their custody or under their control that relate to a matter being investigated by the Compliance Officer.
18. The MP and IPSA shall, in the absence of any indication to the contrary, comply with any such request within 15 working days of the request being made unless an application for an extension of time is agreed by the Compliance Officer.
19. A request for information may be satisfied by the production of copies of the documents requested, provided that originals (where available) are retained for inspection if required.
20. The Compliance Officer may make a request in writing to the MP and IPSA to provide further information in writing or, if the Compliance Officer considers it appropriate, verbally by way of a meeting.
21. The Compliance Officer may provide to each of the MP and IPSA copies of any information and documents which the other has provided to the Compliance Officer in response to a request made under paragraphs 17 or 20.
22. For the purposes of conducting the substantive investigation the Compliance Officer may request information from any source the Compliance Officer deems appropriate.

Representations and hearings

23. Before the Compliance Officer makes any provisional findings about the matter being investigated, the MP and IPSA may make representations in writing to the Compliance Officer within such period as the Compliance Officer may reasonably specify.
24. The Compliance Officer may by notice indicate to the MP and IPSA any specific points that the Compliance Officer considers that they should address in their representations.
25. The Compliance Officer shall in every case give the MP the opportunity to be heard in person by the Compliance Officer for the purpose of making representations. Exceptionally, however, the Compliance Officer may decide that it is appropriate to hold a hearing with the MP even though the MP has not requested to be heard in person.
26. The MP shall also be given the opportunity, to request that another person attend the hearing with the Compliance Officer to represent the MP or to be asked about the matter in question.
27. Where the MP requests another person attend to be asked about the matter in question the Compliance Officer shall send a written request to that person to attend.
28. In any case where the MP is heard in person, the Compliance Officer shall offer IPSA the opportunity to attend the hearing and be heard in person.
29. The Compliance Officer shall maintain a record of the substantive investigation.

Statement of provisional findings

30. Following any representations made under paragraphs 23 or 25, the Compliance Officer shall prepare a statement of provisional findings as to whether the MP has been paid an amount under the Scheme that should not have been allowed.
31. The statement of provisional findings may include:
 - a. a finding that the MP failed to comply with any requirement specified by the Compliance Officer under paragraphs 17 or 20; and
 - b. findings about the role of IPSA in the matter under investigation, including findings that it was wholly or partly IPSA's fault that the MP was paid an amount under the Scheme that should not have been allowed.
32. The Compliance Officer shall send the statement of provisional findings to the MP and IPSA, who shall each be offered the opportunity to make representations in writing about the provisional findings within such period as the Compliance Officer may reasonably require.
33. Exceptionally, where it appears appropriate to the Compliance Officer to do so, representations may be made verbally.
34. Representations shall normally be made only in relation to matters that have been considered by the Compliance Officer during the course of the investigation. In the event that, exceptionally, the Compliance Officer permits one party to introduce new information in written representations, the Compliance Officer shall send that party's representations to the other party, who will be permitted to respond within such period as the Compliance Officer may reasonably decide.

Statement of findings

35. Following any representations made under paragraphs 32 or 33, the Compliance Officer shall, except where paragraph 36 applies, prepare a statement of findings as to whether the MP has been paid an amount under the Scheme that should not have been allowed.
36. The Compliance Officer may determine not to prepare the statement of findings referred to in paragraph 35 where the MP:
 - a. accepts the Compliance Officer's provisional findings;
 - b. agrees to repay to IPSA in such manner and within such period as the Compliance Officer considers reasonable, such amount as the Compliance Officer considers reasonable (and makes the repayment accordingly); and
 - c. makes the repayment accordingly.
37. The statement of findings may include findings relating to the matters set out in paragraph 31.

Combined investigations

38. Where, during the course of an investigation, it comes to the Compliance Officer's attention that the MP may have been paid other amounts under the Scheme that should not have been

allowed, the Compliance Officer may give notice to the MP and IPSA of the Compliance Officer's intention to join all such investigations into a single investigation.

39. If the MP disagrees with the Compliance Officer's proposal to combine one or more investigations into a single investigation, the MP shall notify the Compliance Officer in writing of the reasons why the MP considers that separate investigations should be conducted.

Public access to an investigation

40. Subject to paragraph 44, where the Compliance Officer is satisfied that there is reason to believe that the MP may have been paid an amount under the Scheme that should not have been allowed, the Compliance Officer shall publish, in such manner as the Compliance Officer considers appropriate, the following information:

- a. the name of the MP; and
- b. particulars of the matter that is to be investigated.

41. Subject to paragraph 42, in any case where the MP is heard in person, the Compliance Officer shall take reasonable steps to secure that members of the public are able to attend the meeting.

42. The Compliance Officer may impose restrictions on attendance by members of the public at any meeting referred to in paragraph 41, or any part of it, where it appears appropriate to do so having regard to all the circumstances and, in particular, any guidance provided by IPSA.

43. Subject to paragraph 44, the Compliance Officer shall publish, in such manner as the Compliance Officer considers appropriate, the following information:

- a. a record of the discussion at any hearing referred to in paragraph 41;
- b. all written and verbal representations made to the Compliance Officer by the MP and IPSA;
- c. any provisional finding made under section 9(4) of the Act;
- d. any agreement by the MP under section 9(8)(c) of the Act to repay to IPSA such amount as the Compliance Officer considers to be reasonable, following a provisional finding that the MP was paid an amount under the Scheme that should not have been allowed; or
- e. any finding made under section 9(5) of the Act.

44. The Compliance Officer may defer or withhold publication of the information set out in paragraphs 40 and 43 where it appears to the Compliance Officer appropriate to do so having regard to all the circumstances and, in particular, any guidance provided by IPSA.

Suspending an investigation

45. The Compliance Officer may at any time, by notice to the MP and IPSA, suspend an investigation for such period as appears to the Compliance Officer to be necessary for:

- a. the completion of any other investigation relating to any of the matters to which the investigation relates; or
- b. the determination of any civil or criminal proceedings arising out of those matters.

Glossary

46. In this document-

- a. "the Act" means the Parliamentary Standards Act 2009, as amended by the Constitutional Reform and Governance Act 2010;
- b. "the Compliance Officer" means the officer for the time being appointed under section 3 (3) of the Act (or any person authorised by IPSA under paragraph 9(2) of Schedule 2 to the Act to carry out the functions of the Compliance Officer if the office of Compliance Officer is vacant);
- c. "IPSA" means the Independent Parliamentary Standards Authority;
- d. "the MP" means a member of the House of Commons or (as the case may be) a former member of that House;
- e. "the Scheme" means the scheme, entitled "The Expenses Rules", for the payment of expenses to Members of Parliament made by IPSA in the exercise of the powers conferred on it by section 5(3)(a) of the Act to prepare an MPs' allowances scheme.

Guidance on Recovery of Overpayments

Charging of interest

1. Paragraph 1(6)(a) of the 2009 Act provides that where the Compliance Officer issues a repayment direction to an MP, the Compliance Officer may require that the MP pay to IPSA interest on the amount that a member must repay under the direction.
2. In determining whether to use this provision, the Compliance Officer shall be guided by the principles of fairness, proportionality and the public interest. The Compliance Officer shall have regard to all the circumstances of the case, and in particular to whether:
 - a. the amount to be repaid is substantial; and
 - b. the MP was at fault in making the claim.
3. The rate of interest payable by the member shall be specified in the repayment direction, and will be determined by the Compliance Officer, having regard to the extant base rate and commercially available interest rates.

Charging of costs

4. Paragraph 1(6)(b) of the 2009 Act provides that where the Compliance Officer issues a repayment direction to an MP, the Compliance Officer may require that MP to pay to IPSA an amount reasonably representing the costs incurred by IPSA in relation to the repayment, including the costs of the Compliance Officer in conducting the investigation.
5. In determining whether the repayment direction should include such a requirement, the Compliance Officer shall be guided by the principles of fairness, proportionality and the public

interest. The Compliance Officer will have regard to all the circumstances of the case, and in particular to some or all of the following factors; whether:

- a. the MP was at fault in making the claim;
 - b. it was the first error by the MP in question; and
 - c. the MP was the cause of any time wasting or obstruction during the investigation.
6. Where the Compliance Officer finds that the payment of a wrongful claim was wholly or partly IPSA's fault, the MP shall not generally be required to pay costs under the repayment direction.
7. The scheme for the calculation of costs is below.

Length of the Investigation	A sum – to be determined by the Compliance Officer - allocated per eight hour slot spent exclusively on the investigation.
Information-gathering costs	A proportion – to be determined by the Compliance Officer – of the costs incurred in obtaining, recording and/or administering information gathered by the Compliance Officer for the purpose of the investigation.
Meeting and/or hearing costs	A proportion – to be determined by the Compliance Officer – of the costs incurred in arranging and holding meetings and/or hearings with the MP during the investigation.
Any other costs of the investigation	A proportion – to be determined by the Compliance Officer – of the other costs incurred during the investigation not provided for elsewhere in the scheme for the calculation of costs.
Any other costs incurred by IPSA in relation to the investigation	A proportion – to be determined by IPSA and agreed by the Compliance Officer – of the costs incurred by IPSA during the investigation.

Guidance on Penalty Notices

Failure to comply with a request for provision of information

1. If the Compliance Officer makes a finding under paragraph 9(5) that the MP has without reasonable excuse failed to comply with a requirement under paragraph 9(3) (provision of information to Compliance Officer), the Compliance Officer may, by a penalty notice, impose a penalty on the MP.
2. The penalty will be a sum of money payable by the member to the IPSA, who shall pay it to the Consolidated Fund.
3. In determining the amount of the penalty, the Compliance Officer will take into account whether the MP has previously failed to comply with a request under paragraph 9(3) for provision of information.
4. In determining the amount of the penalty, the Compliance Officer will normally be guided by the following:

- a. a penalty of the amount of 250 pounds (or, in the event that the maximum amount of the penalty, as provided for in paragraph 7(2) of Schedule 4, is increased pursuant to paragraph 7(3) of Schedule 4, one quarter of the maximum amount of the penalty) on the first occasion that an MP fails to comply with a request for provision of information;
- b. a penalty of the amount of 500 pounds (or, in the event that the maximum amount of the penalty, as provided for in paragraph 7(2) of Schedule 4, is increased pursuant to paragraph 7(3) of Schedule 4, one half of the maximum amount of the penalty), on the second occasion that an MP fails to comply with a request for provision of information; and
- c. a penalty of the amount of 1000 pounds (or, in the event that the maximum amount of the penalty, as provided for in paragraph 7(2) of Schedule 4, is increased pursuant to paragraph 7(3) of Schedule 4, the maximum amount of the penalty), for the third and all subsequent occasions that an MP fails to comply with a request for provision of information.

Failure to comply with a repayment direction

- 5. If the Compliance Officer is satisfied that the MP has without reasonable excuse failed to comply with any requirement contained in a repayment direction, the Compliance Officer may, by a penalty notice, impose a penalty on the MP.
- 6. The penalty will be a sum of money payable by the member to the IPSA, who shall pay it to the Consolidated Fund.
- 7. In determining the amount of the penalty, the Compliance Officer will take into account whether the MP has previously failed to comply with any requirements contained in a repayment direction.
- 8. In determining the amount of the penalty, the Compliance Officer will normally be guided by the following:
 - a. a penalty of the amount of 250 pounds (or, in the event that the maximum amount of the penalty, as provided for in paragraph 7(2) of Schedule 4, is increased pursuant to paragraph 7(3) of Schedule 4, one quarter of the maximum amount of the penalty) on the first occasion that an MP fails to comply with any requirement in a repayment direction;
 - b. a penalty of the amount of 500 pounds (or, in the event that the maximum amount of the penalty, as provided for in paragraph 7(2) of Schedule 4, is increased pursuant to paragraph 7(3) of Schedule 4, one half of the maximum amount of the penalty), on the second occasion that an MP fails to comply with any requirement in a repayment direction;
 - c. a penalty of the amount of 1000 pounds (or, in the event that the maximum amount of the penalty, as provided for in paragraph 7(2) of Schedule 4, is increased pursuant to paragraph 7(3) of Schedule 4, the maximum amount of the penalty), for the third and all subsequent occasions that an MP fails to comply with any requirement in a repayment direction.

ANNEX B: FLOWCHART OF PROPOSED PROCEDURES

