

Anonymous Respondent

Consultation Question

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

Yes – and the proposals as outlined seem both sensible and logical.

Consultation Question

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

While fully accepting the need for openness and transparency and the need to restore and retain public confidence in the parliamentary expenses arrangements, publication of the identity of the MP and details of the issue at the conclusion of the investigation would seem the most appropriate arrangement. It would respect the need for openness and transparency and also prevent speculation that might unfairly impact on the Compliance Officer's investigation or the MP's reputation. One is aware that both the Compliance Officer and MP could be placed in a difficult position if details were in the public domain / media whilst an investigation was underway on which, due to the ongoing investigation, they were unable to comment.

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?

These minor changes to the procedures to improve their clarity and streamline processes appear sensible and proportionate.

Committee on Standards and Privileges

Letter from Kevin Baron, Chair, Committee on Standards and Privileges, to John Sills, Director of Policy, IPSA

1. You wrote to me on 11 October about IPSA's consultation on procedures for investigations carried out by the Compliance Officer, because under section 9A of the Parliamentary Standards Act 2009 the Committee on Standards and Privileges is one of the statutory consultees on this matter. This response is based on the Committee's discussions after you and your colleagues gave evidence to us on the matter. It will be published together with the evidence you gave so that it is available to all Members of the House, and the wider public.

General considerations

2. The Consultation asks a number of detailed questions, but before I deal with them, there are general points the Committee has asked me to make.

3. We support the principle of independent oversight of MPs' expenses. Such oversight should be rigorous, and complaints of improper use of resources should be properly and independently investigated. This is vital if we are to increase public confidence in the system. But there are other ways in which IPSA and the Compliance Officer can increase public trust. These are, ensuring that information is communicated to the press and public in a balanced way and that guidance gives a full picture of the system. The system needs both to be transparent and to be fair, and be seen to be fair. It needs to address both the procedural aspects of investigations, and, at the widest level, the communications strategy for information about both the investigative procedures and individual complaints. Our comments on individual questions are shaped by these considerations.

4. We believe it would be helpful if the document setting out the Procedures for investigation enabled readers and users to appreciate the system of which the Procedures are a part. We ourselves have tried to make it clear that the House of Commons system for investigating complaints is not a substitute for criminal investigations or proceedings. While paragraph 45 of the current edition of the Procedures does refer to suspending investigations to allow for the completion of other investigations or civil or criminal cases, this is not sufficient to explain the relationship between the Compliance Officer's investigations and those of the police.

5. The Committee accepts that IPSA is bound by the terms of the Parliamentary Standards Act 2009 (as amended by the Constitutional Reform and Governance Act 2010), and that there are areas where it does not have discretion. For example, the statute makes clear that it is for IPSA, not the Compliance Officer, to determine and consult on procedures, even though it might appear appropriate for an independent officer to do so on his own behalf. We note that in evidence we were assured that the Compliance Officer and IPSA worked together to produce the proposals which are being consulted upon. While IPSA has a statutory duty to consult, and to prepare the guidelines, in future consultations it might be clearer to indicate which changes arise from a recommendation from the Compliance Officer.

6. There are other areas where the evidence we took suggested that IPSA could take a less restrictive approach to its statutory duties than it currently does, and in so doing could

make its information more helpful. For example, the current consultation relates to procedures under section 9A, which refers to investigations where the Compliance Officer has reason to believe that a Member of the House may have been paid an amount that should not have been allowed. This is quite proper. However, section 6A of the Act gives the Compliance Officer the duty to consider whether IPSA's decision to refuse a claim or part of a claim is a determination which should not have been made. In evidence the Compliance Officer indicated his view was that guidance on section 6A should not be included in Procedures for Investigation. While there is no statutory requirement for procedures on this matter, or for consultation, we consider it would be helpful if the document setting out procedures under section 9A could include a brief statement setting out the Compliance Officer's full remit. We see no reason why this would breach the terms of the Act, and it would set the Procedures themselves in context for both Members and the public. We also suggest that the Compliance Officer considers the desirability of fuller, separate, guidance on such reviews.

Appeal Mechanisms

7. The current Procedures and the proposals on which IPSA is currently consulting concentrate on matters entirely within the control of the Compliance Officer. The Parliamentary Standards Act makes it clear that Members have a right of appeal to the First Tier Tribunal both against refusals to pay expenses (after they have been confirmed by the Compliance Officer) and against directions to repay, or penalties for failing to comply with the Compliance Officer's directions after a section 9 investigation. The Procedures should contain information about the relevant appeal mechanisms and they should be included on any future flowchart showing the Procedures.

Fairness

8. We also consider that the Procedures should address the fairness of the investigation, and we have concerns about the document as it stands. Some of these concerns would be addressed by ensuring that the Procedures contained clear information about the appeal mechanisms already contained in the Act, as we recommend above. Some need substantive changes to the guidelines about procedures themselves, and it appears that the Compliance Officer's current practice recognises these difficulties. For example, we note that in the current Procedures the presumption is that hearings with Members should be held in public. In fact the Interim Compliance Officer told us that he did not consider this appropriate. We consider that hearings should be held in private, and we note that the interim Compliance Officer told us that "I would find it quite hard to envisage a situation in which I would be inviting the public into hearings." Any proceedings in the First Tier Tribunal would presumably be open to the public but these are appellate proceedings against a finding which has already been made.

9. Similarly, while it was clear from our discussions with IPSA and the Compliance Officer that those subject to investigation would in practice be allowed to be represented by others and given advice if they so wish, this is not explicit in the Procedures. We accept that such representation may well be unnecessary in the context of the Compliance Officer's investigations, and could cause delay, but we consider the Procedures should give an accurate account of the Compliance Officer's practice. We recommend that in preparing revised Procedures great care is taken to ensure that they are fair at each stage. The Procedures should also reflect the statutory requirement that the member who is the subject of the investigation should be given an opportunity, where the Compliance Officer

considers it appropriate, to call and examine witnesses (s.9A(3)(b)). The current Procedures do not appear to address this adequately.

10. We also recommend that IPSA seeks advice on the circumstances in which penalty notices will be fair, given that a penalty of £1,000 can be imposed on an MP who fails to comply with a request for the provision of information or with a requirement contained in a repayment direction. Such penalties could be wholly disproportionate when small sums are under investigation.

11. We note that the current procedures allow the Compliance Officer to require an MP who is issued with a repayment direction to pay 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. We note that IPSA has the power to make ex-gratia payments to cover the costs incurred by MPs who have been investigated, where IPSA is at fault in some way. We consider that the Procedures should provide for the Compliance Officer to recommend such payments in appropriate cases.

Detailed Comments

Assessing Complaints/Publication of investigations

12. The consultation document offers separate questions on the procedure for assessing complaints, and the procedure for publishing material, but we believe the two need to be considered together. An investigatory process which cannot withstand press speculation in high profile cases will not increase public confidence. These are issues with which the Commissioner and the Committee are familiar, and if you have not done so already you may find it helpful to look at the Committee on Standards and Privileges' 6th Report of Session 2010-11, Publication of information about complaints against Members (HC 577) which sets out both the Commissioner's practice and the rationale behind it.

13. IPSA currently has three stage process—initial assessment, preliminary investigation and substantive investigation. The proposal is to reduce this to 2 stages: an assessment stage and an investigation stage. The fact of an investigation would be made public after the assessment stage.

14. The current Procedures for investigations stipulate that

"where the Compliance Officer is satisfied that there is reason to believe that the MP may have been paid an amount under the Scheme which 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 matters to be investigated."

15. We note that in evidence the Interim Compliance Officer made clear that it had not been considered appropriate to give such details in the cases investigated so far, until investigations had been completed. We appreciate the intentions behind this decision, but it has had the perverse effect of putting into the public domain the fact that 40 members were under investigation by IPSA, while not subsequently making clear that nearly half of those investigations were closed at an early stage.

16. As the evidence indicated, even if IPSA decides to keep information about an investigation private, such information can be released by the complainant. As noted in the evidence session, the Parliamentary Commissioner for Standards has had experience of

carrying out high profile investigations under immense pressure from the media. Drawing on that experience we recommend that the Procedures should establish a policy that during the Assessment stage there will be no comment on the matter, other than to confirm that a complaint has been received, however much the Compliance Officer is pressed. It may also be desirable to set out very clear, and short, timetables for the preliminary assessment stage.

17. If as a result of the Assessment the Compliance Officer considers that an Investigation is necessary, that fact should be published on the website, with the name of the Member concerned. Similarly, a very high level indication of the matters to be investigated should be included. When the investigation is concluded, there should be a further announcement, including, if appropriate, the information that having investigated, the Compliance Officer did not uphold the complaint. This would reduce speculation about whether a particular case has been closed, or remains the subject of investigation.

18. The Consultation asks whether the Compliance Officer should only release the name of the MP later in proceedings, when the provisional or determinative findings are known. We consider that late release of the name would have several disadvantages. The first is that in any high profile case media pressure on the MP and the Compliance Officer before that stage would be extreme. Earlier disclosure could reduce it. Moreover, there is a public interest in transparency, insofar as it is possible to provide it without prejudicing the fairness of any investigation. We consider there are particular difficulties with releasing details at the stage of the provisional finding. This would increase pressure on the Compliance Officer to confirm that provisional finding, and be unfair to the Member concerned, by prejudicing the further stages of the process.

19. Because of the public interest in transparency, we recommend that, like the Parliamentary Commissioner for Standards, the Compliance Officer publishes statistics on complaints on his website, regularly updated, including the numbers of complaints which are not upheld or not accepted for investigation.

20. There is one further point we note. The consultation paper says:

"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 the claim would be published by IPSA."

We do not understand the rationale behind this proposal. If the Compliance Officer decides it is disproportionate to open an investigation, it appears oppressive that IPSA may, of its own volition, decide to revisit a claim that it had already determined. Moreover, the Act gives Members power to appeal to the Compliance Officer against IPSA decisions, and they would be likely to use it in such cases. This would mean that the Compliance Officer would end up conducting investigations that he or she had initially decided would be disproportionate.

Other proposals

21. The Committee agrees with the proposals to:

- "Make explicit in the Procedures the requirement that where the Compliance Officer exercises his or her discretion, it is done lawfully, fairly and proportionately. ..."

- "Make clear that the Compliance Officer may decide not to open an investigation on the ground that to do so would be disproportionate."
- "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."
- "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."
- "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."
- "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."

22. The Committee notes the proposal that the new procedures should:

"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."

In almost every case, this will be appropriate, but it should be made clear that where there are good reasons to do so (such as disability) information can be provided in another form, agreed by the Compliance Officer.

23. The Committee notes the intention to:

"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."

In principle, timeframes provide a sensible structure, but given the pressure on Members' time and the potentially disproportionate financial penalties for failure to provide information the Compliance Officer should have a wide discretion in applying them.

24. The Consultation also asks whether other changes should be proposed. The comments which follow refer to the current edition of the Procedures.

Paragraphs 5 and 6

25. While we support the principle behind the stipulation that requests for investigation should be made in writing on the approved standard form signed by the person making the request, there should be arrangements made for those unable to comply with this condition.

Paragraphs 40-44

26. We have already indicated that we do not think it appropriate that hearings should be public, and nor do we believe that provisional findings should be published separately from final determinations. We agree that the Compliance Officer should have discretion to withhold publication of information if it is appropriate to do so, since some material may be properly confidential, such as medical details or irrelevant matters relating to third parties.

Paragraph 45

27. We consider that the Procedures should give the Compliance Officer a wider discretion to suspend investigations by clarifying that the grounds listed in the Procedures are exemplary rather than prescriptive. If IPSA does not accept this, we consider the Procedures should at the least provide that investigations may be suspended or closed on medical grounds, as well as those given in the current document.

The Compliance Officer

Thank you for consulting me on the proposed changes to the Compliance Officer's Procedures for Investigations.

I have some general observations and a few specific comments about the detail of the proposed changes to the current procedures.

General observations

Firstly, I would like to thank you and your colleagues in the policy team for the highly constructive way in which you have worked with me in developing the consultation paper. My predecessor, Luke March, asked for the procedures to be reviewed following his experience of working with the current procedures. My experience of the current procedures mirrors Mr March's and I am grateful to IPSA for acting to bring about improvements to them.

I welcome many of the proposed changes which will, I believe, make the investigatory process easier to understand and will enhance the Compliance Officer's ability to conduct investigations in a reasonable and proportionate manner, without adopting an unnecessarily bureaucratic approach when the case does not merit it.

In drafting the new set of procedures, I believe it would be helpful if the document could take the form of a single-reference document (or handbook) for investigations, covering the statutory elements relating to Compliance Officer investigations, as stipulated by the Parliamentary Standards Act 2009 (as amended) (the Act), IPSA's procedural guidance, full details of repayment and penalty provisions, and the circumstances in which an MP may appeal to the First Tier Tribunal.

Detailed comments

Assessing complaints – limitation period

The current procedures state that, unless the Compliance Officer is of the view that exceptional circumstances justify otherwise, the Compliance Officer shall not initiate an investigation more than 12 months after the claim in question was paid to an MP. Requests for investigations have to date predominantly been made by members of the public. For this reason, I believe it is important to take into account when details of MPs' costs and expenses are made publicly available by IPSA, so that members of the public are given sufficient opportunity to raise any concerns they may have about an MP's costs or expenses.

Given that certain details are made public only once a year, and that the bi-monthly publication cycle already contains a lag of up to five months from payment to publication, I would welcome an amendment to this provision so that the Compliance Officer shall not initiate an investigation more than 12 months after the claim in question was published by IPSA.

Compliance Officer's discretion

I welcome the proposal make explicit in the procedures that the Compliance Officer has the discretion to turn down a request for an investigation if he or she considers the request to be unfair or an investigation to be a disproportionate action, and that the exercise of his or her discretion must be done lawfully, fairly and proportionately. Any such decision should, of course, be properly documented. For this reason, the procedures should in my view state that where the Compliance Officer decides, for whatever reason, not to conduct an

investigation, he or she should write to the MP, the complainant and, where appropriate, to IPSA to advise them of his or her decision, and the reasons supporting the decision.

I support the proposal that in cases where the Compliance Officer considers an investigation a disproportionate action, IPSA may nevertheless choose to reconsider its original decision to pay a claim. Conducting investigations is necessarily a more bureaucratic and labour-intensive process than IPSA's process for reconsidering payments. Where the nature of the potential breach is minor and the relevant sums of money are small, better use of public funds may be achieved by IPSA reconsidering the claims instead of a full compliance investigation being conducted. Any repayments that may result from IPSA reconsidering claims are the subject of publication. Transparency would, therefore, not be diminished by adopting such a process.

Preliminary investigations

I strongly welcome the proposal to amend the current three-step process of assessment, preliminary investigation and substantive investigation. This process has proved confusing, in particular about whether or not a preliminary investigation constitutes an investigation under the Act. A two-step process, removing the preliminary investigation stage and allowing a fuller initial assessment to be carried out prior to opening an investigation, will considerably simplify the procedures.

Notification of an Investigation

I welcome the proposal that all appropriate parties are notified at the same time when the Compliance Officer opens an investigation. This explicit provision should help ensure that all parties are able to make representations at the appropriate time which should help to keep to a minimum the length of time it takes to conduct an investigation.

Gathering Information

I welcome the proposal to clarify in the procedures that where MPs and IPSA are asked formally by notice to provide information to the Compliance Officer, that this information be provided in writing, wherever possible.

The current procedures state that a requirement for information by the Compliance Officer may be satisfied by the production of copies of any documents requested, provided that originals (where available) are retained for inspection if required. I accept that in the majority of cases, copies will suffice, and that in the case of electronic documents it can be hard even to establish what constitutes an original document. I would, however, welcome an amendment to this provision so that the Compliance Officer may, should he or she believe the circumstances merit it, specify in the request that originals of documents are to be submitted.

Information sharing - timeframes

I welcome the proposal to make an explicit provision that the Compliance Officer shall, within set timeframes, provide both to MPs and to IPSA copies of information the other has provided to the Compliance Officer during an investigation. This should help assist both parties when making their representations to the Compliance Officer. I do not foresee circumstances where the Compliance Officer would wish to exert discretion in this area, although it may be sensible to include a provision enabling him or her to do so should exceptional circumstances justify such an approach.

I also welcome the proposal to set timeframes for MPs and IPSA to make representations to the Compliance Officer, although the Compliance Officer should, again, have the discretion to vary the timeframes if the circumstances of the case merit it.

Hearings

The current and proposed procedures start with the premise that if an MP opts to make representations in person by way of a hearing, the Compliance Officer shall take reasonable steps to secure access to the hearing by members of the public. Although the procedures do give the Compliance Officer discretion over this matter, I am of the view that the position should be the opposite one: only if exceptional circumstances warrant it, should such a hearing be held in public.

The question of MPs' use of costs and expenses remains one of considerable public and media interest. Although this may argue in favour of public hearings, the nature of the coverage is frequently of a prurient nature, and presumes the guilt of the MP under investigation. MPs who would wish to make representations by way of a hearing would, under the current arrangements, find themselves at greater risk of potentially unwarranted public censure than those who choose not to. The consequence of this is that MPs who may wish to make representations in this way – and who may have good reason to do so – may be deterred from doing so for fear of such public censure.

Public confidence in the process is essential, and transparency is a key aspect of this. This can, however, be achieved by ensuring that the procedures of a hearing are fully documented and a transcript or comprehensive note of the meeting are published as part of the Compliance Officer's findings. An added benefit to this approach is that it would help with the management of the costs of the compliance function.

Repayment direction

I welcome the proposal to include the legal framework for repayment directions in the procedures. This will help improve the usefulness of the procedures as a single-reference document.

Publication

I support the principle that details of investigations should be subject to publication. The current procedures envisage publication at the start of an investigation of basic details of the case: the MP's name and the particulars of the matter under investigation. However, the current procedures also give the Compliance Office discretion over when he or she wishes to publish details of an investigation.

To date, the Compliance Officer has exercised this discretion and published details only on conclusion on an investigation. This approach is, however, not without its drawbacks. The principal drawbacks are, firstly, that the Compliance Officer may be accused of acting in a secretive manner in the way in which he or she conducts investigations; and, secondly, that adopting this approach potentially places the timing of publication of these basic details in the hands of the complainants, who will have been notified that an investigation is being conducted.

For these reasons, I favour the removal of the Compliance Officer's discretionary powers over when to publish the basic details of a case, and would strongly recommend that the Compliance Officer follows the model established by the Parliamentary Commissioner who publishes on his website the names of MPs who are the subject of an inquiry, with a brief description of the nature of the complaint. If this model were adopted, the Compliance

Officer would publish on the compliance website the names of MPs under investigation, and a reference to the category of expense the investigation is being conducted into.

Speculation about an MP may arise during the assessment stage. I recommend that the procedures make provision for this, and recommend that in such cases the Compliance Officer offers no comment on the matter, beyond confirming receipt of a complaint.

It is, in my view, important that the Compliance Officer does retain the ability, should exceptional circumstances merit it, to defer or withhold publication of the full details of an investigation. The presumption, however, should remain that the Compliance Officer publishes full details of an investigation on its conclusion.

1922 Committee

Herewith the 1922 Committee's response to the IPSA consultation entitled: **Procedures for Investigations of the Compliance Officer for IPSA.**

The 1922 Committee has made known its concerns about the role and powers of the Compliance Officer in previous submissions to IPSA. The precipitate action taken by IPSA against more than twenty colleagues, in the run up to the Summer Recess, has heightened these concerns. This initial round of investigations resulted in the resignation of Luke March, the then Compliance Officer. The Committee understands that Mr March was unwilling to disclose the names of those Members under investigation because he felt to do so would be disproportionate and subject them to evisceration by the media.

IPSA is now right to recognise that as public figures, significant reputational harm is caused to those Members of Parliament identified as being under investigation. The current compliance rules provide an incentive for political opponents, or people simply bearing a grudge, to make vexatious complaints. Furthermore, as identified in the above paragraph, the recent investigations initiated by IPSA, for alleged minor infractions, resulted in Members of Parliament facing public censure for what at worst were technical breaches. In a number of these cases, no breaches of the rules were found to have occurred and most of the matters under investigation could have been dealt with via a corrective telephone call.

In view of the above and to ensure that the rules are enforced proportionately, the 1922 Committee would ask that the names of Members of Parliament are only published if they are found to have broken the rules. The Committee also asks that the Compliance Officer makes a clear distinction between technical breaches and what he/she believes to be deliberate wrongdoing. The Committee is firmly of the view that the Compliance Officer should be able to exercise his/her discretion when it comes to deciding whether or not to pursue an investigation.

The Committee notes the proposed change to the rules relating to Hearings, which would mean that a Hearing would only be called by the Compliance Officer with the agreement of the Member of Parliament under investigation. The Committee supports such a change.

The Committee remains concerned about the extent of the Compliance Officer's powers to recover costs from Members of Parliament for his/her investigations and also his/her powers to recover costs on behalf of IPSA. We hope that the Compliance Officer will be guided by the principles of fairness and proportionality in exercising these powers.

The Speaker

Thank you for inviting me, as a statutory consultee, to respond to your proposals for amendment of the procedures for investigations of the compliance officer.

In making this submission I should emphasise that the views which I will outline here are exclusively my own and have no relationship to my status as the Chairman of the Speaker's Committee on IPSA or as Chair of the House of Commons Commission. I have used the term 'complaint', throughout, to include complaints, referrals from IPSA and matters identified by the Compliance Officer.

I have noted the discussions which have taken place over recent weeks between IPSA and the Compliance Officer on the one hand, and SCIPSA and select committees on the other. These discussions have demonstrated the need for clarification of various aspects of the procedures.

Transparency about Members' expenditure is vital to public confidence in Parliament and I welcome the role that IPSA has played, as an independent body, in creating greater transparency. The existence of the compliance function is an essential part of the regulatory framework but its procedures are not as easy to understand as they might be. Both Members and the wider public require certainty that the regulation of Members' expenditure is consistent, effective, proportionate and (not least) fair: it is vital that information about the procedures is as clear as possible.

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

Over recent months I have heard Members express concerns about the current three-stage process. As your paper notes there is confusion, in particular about when an investigation begins (to take an example from within the consultation paper itself, the procedure is described at paragraph 10 as including an assessment stage prior to investigation, yet at paragraph 4 of Annex A an investigation "shall be regarded as commencing" with receipt by the Compliance Officer of the complaint).

The terminology currently used is unclear and fails to differentiate sufficiently between the stages. There must also be a risk of duplication of effort if the question of whether there is a complaint to be answered is considered as a task distinct from preliminary assessment of the evidence.

The proposed two-stage process of assessment followed by investigation appears to me to be clearer and easier to understand. It should also increase the efficiency of the process: I therefore support it.

Paragraph 13

Paragraph 13 proposes that the Compliance Officer should inform IPSA of a decision not to open an investigation on the grounds that to do so would be disproportionate. This is unexceptionable, although the Compliance Officer's decision should also be published more widely if the complaint itself has entered the public domain.

IPSA's position, in the second half of paragraph 13, causes me concern. The paper states that IPSA "may, in appropriate cases, review its decision to pay" claims which have been the subject of an assessment but not pursued on grounds of proportionality. The paper provides no further information as to the circumstances in which IPSA might consider retraction of a payment appropriate.

My misgivings about this suggestion rest on two points:

- firstly, the propriety of IPSA apparently taking upon itself the right to retract payment where the Compliance Officer has determined further action should not be taken, and by doing so effectively to usurp the Compliance Officer's function (and to imply an assumption of impropriety, without a detailed examination);
- secondly, the potential for escalation: if a payment to a Member is retracted it must be conceivable that the Member will then appeal to the Compliance Officer, opening up a costly process which had already been determined to be disproportionate to the original complaint or referral.

It may be that further explanation of the context would show these concerns to be unfounded: I would be pleased if such an explanation can be provided. If, however, the implication is indeed that IPSA might take action where the Compliance Officer has determined no action should be taken I would urge your further consideration, both on the grounds of propriety and responsibility to the taxpayer.

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

The question here is how the Compliance Officer may act fairly both towards the public, in respect of the legitimate public interest, and towards the individual Member against whom a complaint has been received.

These requirements work together, in so far as it is important to the Member that information in the public domain should be accurate and avoid potentially unfair and damaging speculation. My opinion would be that, in view of the significant interest in Members' claims, speculation should be avoided by the controlled and timely publication of the essential facts. While, in equivalent cases in other sectors, it might be possible to keep the fact of an inquiry private until a determination has been made I do not think that it would be possible in respect of Members.

It may be useful here to consider the practice of the Office of the Parliamentary Commissioner for Standards. This office has similarly to bear in mind both the public interest and fairness to the individual Member. In summary, the Commissioner's practice is to publish the name of the Member about whom a complaint has been received, together with the category under which the complaint would fall, at the beginning of the month following his decision to undertake an inquiry, and after the Member and the complainant have been informed. The office does not comment further on the progress of the inquiry. If the Commissioner submits a report to the Committee on Standards and Privileges, the Committee will publish that Report, along with the evidence the Commissioner has received, under cover of a short report of its own, on its webpages. If the Commissioner does not submit a formal report in this way, because he has decided not to uphold the complaint or he has rectified it, he will publish his decision letter and the supporting evidence on his webpages. This approach was considered by the House on 2 December 2010, in the course of debate on the Sixth Report of the Standards and Privileges Committee 2010-11, *Publication of information about complaints against Members* (HC 577), which the House approved.

It therefore seems to me that the best approach would be to confirm the fact of a complaint at the point where an investigation is formally opened (be that a preliminary investigation under the existing procedure or an investigation under the proposed two-stage process). This statement should consist only of the name of the Member against whom the complaint has been made and

a simple categorisation of the nature of the complaint—for example, a claim relating to accommodation, or general administrative expenditure. The full facts and findings should of course be published at the conclusion of an inquiry. I do not think that the decision when to publish details should be at the Compliance Officer's discretion: such an approach would create uncertainty for the complainant and the Member, could lead to damaging speculation and could result in pressure being exerted upon the Compliance Officer, to the detriment of the investigation.

It is essential that public account should be made of all complaints which are acknowledged to have been received, including those which are not pursued or found not proven. Failure to do so risks reputational damage to the Member against whom the complaint was made, and over whom the suspicion of wrongdoing may otherwise rest indefinitely. A process which does not publicly dispose of all complaints could make Members particularly vulnerable to malicious complaints which are designed to undermine their reputations, or have that effect.

C and D: Do you agree with these proposals [for minor changes to the Procedures]? Are there any other changes that you think should be made?

The proposals in chapter four to increase the clarity of the procedures are welcome.

Paragraph 18d

It appears sensible to introduce timeframes for the various stages of the investigation, in order to ensure the efficient conduct of the investigation and improve understanding of the process. There should, however, be some flexibility over timeframes to allow for cases where (for example) a Member under investigation is seriously ill or taking caring leave. This same principle, of providing express authority to the Compliance Officer to exercise discretion where there is good reason to do so, might also apply in other circumstances: an example might be the provision of discretion to suspend an investigation, in accordance with paragraph 45 of the current procedures, on medical or compassionate grounds.

Paragraph 18f

You will be aware that concerns have been expressed about the circumstances in which public hearings would be conducted. I welcome, therefore, the proposals in paragraphs 18e and 18f to clarify the role of hearings in the procedure and to make clear that such a hearing would only be called with the Member's agreement.

Paragraph 18g

In addition to including the legal framework for Repayment Directions in the Procedures it would be helpful also to include information about appeals mechanisms available to the Member.

Paragraph 18h

The proposal here does not indicate whether there are any implications for the Member under investigation of the Compliance Officer's decision either to include a new matter in a current investigation, or to open a new inquiry. It would be helpful to know whether coupling or uncoupling the lines of investigation would be likely to result in different penalties, and whether the Compliance Officer would take previous investigations and judgements into account when embarking upon a new inquiry.