

Procedures and Guidance for the Compliance Officer for IPSA

November 2014

Committee on
Standards in
Public Life

Chair: Lord Paul Bew

RESPONSE FROM THE COMMITTEE ON STANDARDS IN PUBLIC LIFE TO THE CONSULTATION ON THE PROCEDURES AND GUIDANCE FOR THE COMPLIANCE OFFICER FOR IPSA

1. The Committee on Standards in Public Life welcomes this opportunity to comment on the Independent Parliamentary Standards Authority (IPSA) consultation on the procedures and guidance for the compliance officer. The Committee's political members¹ have not taken part in the preparation of this response to avoid any real or perceived conflict of interest.
2. The Committee on Standards in Public Life (CSPL) is an independent advisory body to the Government, which monitors, reports and make recommendations on all issues relating to standards in public life. The Committee promotes high ethical standards in public life in the UK and works to ensure that the Seven Principles of Public Life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership – underpin all aspects of public life.
3. In 1994, when the CSPL was established by the then Prime Minister, its terms of reference were 'To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.'²
4. The CSPL's Twelfth Report on MPs' expenses and allowances³ made detailed proposals for the reform of the expenses regime. The report was produced at time of profound crisis of public confidence in MPs' integrity and the expenses scheme. The Committee made clear in its report that openness and transparency were the key principles to underpin the new expenses scheme. The Committee welcomed the level of transparency IPSA provided as to each individual claim of reimbursement made by MPs with accompanying receipts or documentary evidence. The role of the Compliance Officer was supported by the Committee.
5. The Compliance Officer has two main functions:

¹ The Lord Alderdice, The Rt Hon Dame Margaret Beckett DBE MP, Dame Angela Watkinson.

² First Report Standards in Public Life CM 2850-I May 1995.

³ MPs' expenses and allowances: Supporting Parliament, safeguarding the taxpayer (Twelfth Report) Cm 7724, November 2009.

- a. To investigate complaints that a claim under the MPs' Scheme of Expenses and costs may have been wrongfully paid to an MP; and
 - b. To review a decision by IPSA not to pay, in whole or in part, a claim under the Scheme.
- 6. The consultation document proposes two main changes to the procedures and guidance for the Compliance Officer which, it is argued, will reduce the risk that an investigation will be prejudiced or that MPs will suffer unfair reputational damage, as well as maximising the ability of the Compliance Officer to gather the necessary evidence. Those two main changes are i) the proposal to remove the requirement for the Compliance Officer to publish the fact of an investigation and ii) the proposal to remove the requirement that the Compliance Officer take steps to ensure that members of the public may attend a hearing. The CSPL has confined its response to these two main changes.
- 7. The CSPL acknowledges that there is a genuine standards balance to be struck here, as well as an issue of public confidence. One of themes that has emerged from the CSPL's 2012 survey on public attitudes to standards in public life and its earlier surveys is that public perceptions of the quality of standards in public life can be influenced by performance.⁴ Perceptions of standards change in response to events and also in response to how an authority reacts to those events. Public confidence can be rebuilt by positive actions and in relation to the public's perceptions of Westminster MPs, whilst levels of confidence have not returned to their 2008 pre-expenses scandal level, in the latest survey pessimism is less marked than in 2010. It is therefore important that any future changes do not have the effect of halting that return of confidence.

Q1 What comment do you have on the proposal to remove the requirement for the Compliance Officer to publish the fact of an investigation before any finding has been made?

- 8. Firstly, it is proposed that the Compliance Officer be required to publicise the facts of the investigation once the investigation has concluded. Currently if the Compliance Officer decides after an "assessment" of the complaint to proceed to a full investigation, the procedures require him to publish the name of the MP and the particulars of the matter being investigated. The CSPL notes that the effect of this change would mean that the "assessment" phase which allows the Compliance Officer to conduct an initial inquiry as to whether or not the case should proceed to investigation will fall away. The CSPL notes that IPSA does not draw a distinction between the mere lodging of a complaint or allegation and the Compliance

⁴ Survey of public attitudes towards conduct in public life September 2013. <https://www.gov.uk/government/publications/public-attitudes-survey-2012>

Officer's assessment before making any finding that there was a prima facie case to answer.

9. The consultation argues that there are reputational and operational implications of publishing unproven allegations and on balance this need for fairness outweighs the public interest in release. IPSA acknowledges that practice amongst regulators on publication is varied.
10. The CSPL proposals for reform of the regime for expenses aimed to provide a framework which was transparent, accountable and free from suspicion of personal advantage. The principle of Openness requires decisions to be taken in an open and transparent manner with information not being withheld from the public unless there are clear and lawful reasons for doing so.⁵ The CSPL is concerned that the change sought will reduce the level of openness and risks damaging public confidence in the regime.
11. The CSPL also notes that this change would mean that there would be a difference in treatment with investigations for alleged breaches of the House of Commons code of conduct and rules on registration of financial interests, as the Parliamentary Commissioner for Standards, pursuant to a Procedural Note approved by the House of Commons, does publicise the fact an investigation has started on her website, setting out the name and general area of rules under investigation.⁶
12. The CSPL acknowledges the potential for unfairness to MPs resulting from publication and the practical difficulties this may pose for the Compliance Officer, but the CSPL has reservations about the change because:
 - a. the change is not consistent with the principles of openness and transparency which underlie the scheme;
 - b. it puts IPSA procedurally at odds with the position of the Parliamentary Commissioner for Standards;
 - c. the CSPL is not convinced that practically the change proposed would achieve the outcome in every case IPSA is seeking, as presumably IPSA cannot prevent an individual complainant, or a leak, disclosing the fact of a complaint, which may, if publically released, result in the same impacts the changes are aimed at avoiding.

Q2 What comments do you have on the proposal to remove the requirement that the Compliance Officer take steps to ensure that members of the public may attend a hearing?

13. A change to limit the attendance at hearings conducted as part of the investigation of the MP and relevant witnesses is proposed. Currently the Compliance Officer is required to "give the

⁵ Seven Principles of Public Life.

⁶ Procedural Note: Parliamentary Commissioner for Standards 24 April 2012 paragraph 41.

MP the opportunity to be heard in person” but in doing so must “take reasonable steps to secure that members of the public may attend.” The consultation acknowledges that this was intended to provide extra transparency and improve public confidence in the procedures but to date no MP has requested a public hearing. It is suggested that this is because “any MP is likely to judge that the benefits of the hearing would be outweighed by the possible publication of details of the case.” The results of the hearing would form part of the findings of the investigation which would be published after its conclusion.

14. The CSPL considers the balance to be struck here between openness, transparency and fairness is more nuanced. Just as fairness requires the MP to have an opportunity to be heard, the public interest is met by the Compliance Officer having an opportunity to question and examine the MP’s case. As the consultation suggests it would be in line with the practice of other regulators for such hearings to be conducted in private. The CSPL would want any such change to be accompanied by a requirement to publish written evidence transcripts of the hearing at the conclusion of the investigation, as is the case with cases considered by the Committee on Standards.

The Committee on Standards in Public Life
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7271 2948

Internet: www.public-standards.org.uk

Email: public@standards.gsi.gov.uk

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