



TC05606

Appeal number: TC/2016/01460

MPs' expenses – whether costs of delivering “contact cards” containing contact details of both the MP and local councillors allowable in full as office cost expenses – yes – appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

THE RT HON LIAM BYRNE MP

Appellant

- and -

**COMPLIANCE OFFICER FOR THE
INDEPENDENT PARLIAMENTARY
STANDARDS AUTHORITY**

Respondent

TRIBUNAL: JUDGE JONATHAN RICHARDS

**Sitting in public at The Royal Courts of Justice, Strand, London on 10 January
2017**

The Appellant in person

Heather Emmerson, instructed by Bates Wells Braithwaite for the Respondent

DECISION

1. The appellant, the Rt Hon Liam Byrne MP, is the Member of Parliament for Birmingham Hodge Hill. He is appealing against the decision of the Respondent, dated 26 February 2016, to reimburse only half of the £1,853.75 that he claimed from the Independent Parliamentary Standards Authority (“IPSA”) for costs associated with the delivery of “contact cards” to members of his constituency. Mr Byrne argues that the claim should have been paid in its entirety.

2. There has, in recent years, been much controversy surrounding MPs’ expenses. I should make it clear at the outset that there is no suggestion that Mr Byrne has behaved improperly. This appeal arises out of a genuine, and entirely reasonable, disagreement as to whether the claim should have been paid in full.

Evidence

3. Mr Byrne relied on witness evidence from Mr James Pignon, who was, at material times, Mr Byrne’s office head. Ms Emmerson cross-examined Mr Pignon and I considered him to be a reliable and honest witness.

4. Mr Byrne did not prepare any witness statement and indicated in correspondence during the course of case-management of the appeal that he was not seeking to give evidence himself. Since Mr Byrne is not a lawyer by training and was conducting his appeal in person, I asked him during the hearing whether he was sure about this. It seemed to me that one of the issues in this appeal is whether the expenses in question were necessarily incurred in connection with Mr Byrne’s parliamentary functions and Mr Byrne was clearly in a good position to give evidence as to precisely what he considered his parliamentary functions to be and why he had incurred the expenses. Mr Byrne was clear in his view that he did not need to, or wish to, give evidence and that he could succeed in his appeal by reference to a combination of the documentary evidence, Mr Pignon’s witness evidence and his own submissions.

5. The Respondent did not rely on witness evidence, but Ms Emmerson made submissions by reference to a bundle of documents. I wish to express my particular gratitude to Ms Emmerson for the helpful way in which she explained the relevant background law (which the Tribunal has considered only on one previous occasion) and for her professionalism in bringing out points that could support Mr Byrne’s position, bearing in mind that he was a litigant in person.

Findings of fact

6. In or around October 2015, Mr Byrne incurred £1,853.75 of expenses associated with the delivery of contact cards to members of his constituency. The contact cards were in colour and measured 21cm x 10cm. Different versions of the contact card were used for the four local council wards within Mr Byrne’s constituency. The version of the contact card relevant to a particular council ward featured a photo of Mr Byrne and of the local councillors for that council ward, together with contact details and surgery times for both Mr Byrne and the local councillors.

7. The local councillors referred to on the contact cards were all members of Birmingham City Council. I was shown the Birmingham City Council Members' Allowances Scheme as in force from 19 May 2015 (the "Council Scheme"). The Council Scheme provided for the payment of various allowances and payments. One such allowance was the "Basic Allowance" which was described in paragraph 2.1 of the Council Scheme in the following terms:

A Basic Allowance will be paid to each Councillor and will comprise two elements:

A time element based on 156 days per annum less a Public Services Discount of 25% resulting in a net value of 117 days per annum.

An additional expenses element to meet the cost of telephone rental and calls and office expenses such as postage, stationery and other consumables.

8. The Appendix gave details of the Basic Allowance as follows:

| | |
|---|------------------|
| BASIC ALLOWANCE (per annum unless otherwise stated) | £ |
| Baseline per Day rate | 132.93 |
| Basic Allowance | 16,267.00 |
| Time Element | 15,552 |
| Additional Expenses Element | 715.00 |

9. From the description of the additional expenses element set out in the Council Scheme, I have concluded that it was a fixed sum of £715 that was paid to members of Birmingham City Council. The figure of £715 was intended to enable members to defray the additional expenses referred to but councillors could not make specific additional claims for those expenses. The local councillors listed in the contact cards could, therefore, have chosen to contribute to the cost of the delivering the contact cards by using some of the additional expenses element that they had received from Birmingham City Council (or indeed the time element of their Basic Allowance). However, I do not consider that those local councillors or Mr Byrne himself could have submitted a specific claim to Birmingham City Council for payment of expenses associated with delivery of the contact cards. The provisions of the Council Scheme dealing with the additional expenses element did not make provisions for claims to be made and simply provided that the additional expenses element would, as part of the Basic Allowance, be paid in 12 equal instalments throughout the year.

10. The Council Scheme contained a number of provisions for other expenses to be reimbursed (for example travel expenses and subsistence allowances where councillors were travelling on council business). However, no other aspect of the Council Scheme referred to postage or similar expenses.

11. In May or June 2015, while the contact cards were still being designed, Mr Pignon had a telephone conversation with IPSA during which he asked whether the inclusion of local councillors' details on the cards would be "acceptable" so as not to prevent a claim for costs associated with the cards from being paid. Mr Pignon did not prepare a note of that telephone conversation, or confirm the advice that he received in an email to IPSA. It has not been possible for IPSA to retrieve a recording of the relevant call. I

have nevertheless accepted Mr Pignon’s evidence that such a call took place and that Mr Pignon was assured, by an employee of IPSA, that provided the information on the councillors contained in the contact cards was factual and “in no way party political”, the inclusion of information relating to the councillors would not prevent costs incurred in posting the contact cards from being claimable. I have also accepted Mr Pignon’s evidence that, had he not obtained that assurance, Mr Byrne would not have incurred the expenditure on the contact cards.

12. Mr Pignon dealt regularly with IPSA regarding claims for expenses. He was familiar with the terms of the MPs’ allowances scheme (the “Scheme”) and accepted that having a good knowledge of the Scheme was important given his professional duties. He was aware of statements made in the Scheme to the effect that IPSA would not provide prior approval of claims, or (except as noted in “guidance”) that IPSA would not provide advice on whether particular items are claimable or not. He considered that the “guidance” referred to in the Scheme included assurances given by IPSA employees over the telephone. Therefore, he considered that both he and Mr Byrne were entitled to rely on the assurances referred to at [11]. Later on in this decision, I will explain why I consider Mr Pignon’s understanding to be incorrect. However, I accept that he genuinely had that understanding at the relevant time.

13. In October 2015, Mr Byrne submitted a claim to IPSA for the costs of posting the contact cards. The claim was made on the basis that the postage costs were “office costs expenditure” falling within Chapter Six of the Scheme. IPSA refused to pay the claim largely because it considered that the contact cards had a party political purpose (because the colour and font used in the contact cards were similar to those used by the Labour Party and because all of the council members who featured in the contact cards represented the Labour Party).

14. On 26 February 2016, the Respondent reviewed IPSA’s decision. He accepted that the contact cards did not have any party political purpose (and since the contrary was not argued in front of me, I have taken it to be an agreed fact that there was no party political purpose). However, he still concluded that the expense should not be paid in full broadly because, since the contact cards contained details of local councillors as well as Mr Byrne, the costs of posting those contact cards were not incurred wholly, exclusively and necessarily in the performance of parliamentary functions. The Respondent considered Mr Byrne’s argument that he had been misled by the assurances given in the telephone conversation referred to at [11] but concluded that this could not affect his decision as he could only consider whether the expenditure in question met the requirements of the Scheme. The Respondent’s overall conclusion was that half of the claim should be paid on the basis that the cost should be shared equally between IPSA and Birmingham City Council.

15. In part, this appeal is concerned with the question of whether expenses were incurred wholly, exclusively and necessarily in or for the performance of Mr Byrne’s parliamentary functions. I had no detailed evidence as to what precisely those parliamentary functions are and I am not, therefore, in a position to make detailed findings on this issue. However, in her skeleton argument, Ms Emmerson accepted Mr Byrne’s submission that part of the role of an MP is to further the interests of his

or her constituents. Moreover, I have taken judicial notice of the fact that an MP's duties are not confined to legislative activities carried on in Westminster and that part of an MP's functions include liaising with constituents on matters of relevance to them.

5 Relevant aspects of the MPs' Scheme of Business Costs and Expenses

Statutory basis

16. IPSA is a body corporate established under the Parliamentary Standards Act 2009 ("PSA 2009"). PSA 2009 also established the office of the Compliance Officer for IPSA (the "Compliance Officer"). The Compliance Officer and IPSA are separate
10 persons. As noted, IPSA is a body corporate, but the Compliance Officer is an individual office-holder. At times relevant to this appeal, the Compliance Officer was Mr Peter Davis.

17. Section 5(2) of PSA 2009 provides that IPSA must pay allowances to MPs in accordance with the Scheme. IPSA is obliged to prepare the Scheme and to review it periodically following consultation with interested parties (for example MPs, the Review Body on Senior Salaries and HM Revenue & Customs). In practice, IPSA reviews the Scheme annually and the version of the Scheme with which this appeal is
15 concerned is the version that IPSA determined should take effect for the year from 1 April 2015 to 31 March 2016.

20 18. Under s7 of PSA 2009, IPSA is also obliged to prepare guidance for MPs (the "Scheme Guidance") about "making claims under the Scheme". It must also:

...provide to any member on request such further advice about making claims as the IPSA considers appropriate.

IPSA has published Scheme Guidance. The version in evidence related to the Scheme as applicable to the 2014-15 financial year (whereas the version of the Scheme
25 relevant to this appeal is that relating to the 2015-16 financial year). However, neither party suggested that the guidance for the 2015-16 version of the Scheme was any different from the Scheme Guidance I was shown.

19. Section 6 of PSA 2009 provides, relevantly, as follows:

30 **6 Dealing with claims under the scheme**

(1) No allowance is to be paid to a member of the House of Commons under the MPs' allowances scheme unless a claim for the allowance has been made to the IPSA.

35 (2) The claim must be made by the member (except where the scheme provides otherwise).

(3) 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.

5 Section 6 does not state expressly what criteria IPSA should apply in deciding whether to “allow or refuse the claim”. The statute itself is silent as to whether IPSA retains a residual discretion, because of the presence of particular special circumstances, to pay claims that do not fall within what Ms Emmerson referred to as the “four corners” of the Scheme. However, as noted at [29], the Scheme itself gives some guidance on this point.

10 20. Section 6A of PSA 2009 deals with the situation where IPSA refuse to pay a claim in full. It provides, relevantly, as follows:

6A Review of IPSA's determination

(1) This section applies if—

15 (a) the IPSA determines under section 6(3) 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—

20 (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.

25 (3) The Compliance Officer must give the IPSA a statement of any decision under subsection (2)(b), and may include a statement of the Compliance Officer's findings about the way in which the IPSA has dealt with the claim.

...

30 (6) The member may appeal to the First-tier Tribunal against a decision of the Compliance Officer under subsection (2)(b)...

(8) The appeal is by way of a rehearing.

(9) On an appeal under subsection (6) the Tribunal may—

(a) allow the appeal in whole or in part, or

(b) dismiss the appeal.

35 (10) If the Tribunal allows the appeal (in whole or in part) it may—

(a) order the IPSA to make any payments or adjustments necessary to give effect to that decision;

(b) make any other order it thinks fit.

21. The following points emerge from the above provisions:

(1) The appeal to this Tribunal is against the Compliance Officer's determination, and not IPSA's original determination.

5 (2) The appeal to this Tribunal is by way of a complete rehearing. Ms Emmerson accepted that the Tribunal has a general jurisdiction to reach its own conclusion on the matter. It is not confined to an examination of principles that would be relevant if the Compliance Officer's decision was the subject of judicial review proceedings and is not required to pay any particular deference to the Compliance Officer's original decision.

Relevant provisions of the Scheme itself – criteria for relevant expenses to be paid

10 22. This appeal is concerned with Mr Byrne's claim relating to "office costs expenditure" which is dealt with under Chapter Six of the Scheme. However, it is not sufficient to consider Chapter Six of the Scheme in isolation as the Scheme contains a number of general principles and conditions that are intended to apply to the Scheme as a whole.

15 23. Some "Fundamental Principles" apply to the Scheme. In the interests of brevity, I will not quote all of them. However, some relevant Fundamental Principles are as follows:

20 1. MPs should always behave with probity and integrity when making claims ... and be held, and regard themselves, as personally responsible and accountable for expenses incurred.

2. MPs have the right to be reimbursed for unavoidable costs where they are incurred wholly, exclusively, and necessarily in the performance of their parliamentary functions, but not otherwise.

25 3. MPs must not exploit the system for personal financial advantage, nor to confer an undue advantage on a political organisation.

...

10. The system should be clear and understandable. If it is difficult to explain an element of the system in terms which the general public will regard as reasonable, that is a powerful argument against it.

30 24. Chapter Three of the Scheme contains some "General Conditions of the Scheme" for example:

35 3.2 In making any claim under the Scheme, an MP must certify that the expenditure was necessary for the performance of his or her parliamentary functions, and that in incurring the expenditure he or she had complied with the Scheme.

3.3 The Scheme makes provision for the exercise in certain circumstances of discretion by MPs and by IPSA. Such discretion is not absolute. At all times:

40 a. it shall be exercised reasonably; and

b. MPs and IPSA shall satisfy the requirements of the Parliamentary Standards Act that MPs must only be paid or reimbursed for costs

necessarily incurred for the performance of their parliamentary functions.

25. These apparently simple statements beg some questions. For example, the “Fundamental Principles” state that expenses will be reimbursed only if wholly, exclusively and necessarily incurred in the performance of parliamentary functions. By contrast, the General Conditions contain no reference to expenses being incurred “wholly and exclusively” and require only that the expense is necessary for the performance of parliamentary functions. It is not clear, therefore, what the precise threshold test is.

10 26. Chapter Six of the Scheme deals specifically with Office Costs Expenditure. Relevant provisions of Chapter Six of the Scheme are as follows:

15 6.1 Office Costs Expenditure (OCE) is provided to meet the costs of renting, equipping and running an MP’s office or offices and surgeries, where these costs are not claimable from other budgets under this Scheme, or from other sources.

...

20 6.5 MPs are entitled to exercise discretion over claims for items that meet the purposes of the Office Costs Expenditure budget, provided that the claims meet the general conditions of the Scheme and the conditions of this Chapter.

6.6 Office Costs Expenditure may only be claimed for the performance of parliamentary functions. It may not be claimed for:

...

c. newsletters;

25 27. Again, the language of these provisions is apparently straightforward but difficult issues arise on closer inspection. For example, the precise nature of the MP’s “discretion” referred to in paragraph 6.5 is not clear. Paragraph 6.5 appears to state that the “discretion” applies only where the expenses meet the general conditions of the Scheme (including the requirement that they be “necessarily” incurred). Yet, if the requirement for expenses to be “necessarily” incurred imposes an objective test, it is difficult to see how there could be any discretion at all.

28. The scope of MPs’ “discretion” is touched on in the Scheme Guidance. Section 3 of the Scheme Guidance (which deals with office costs) includes the following sentence:

35 You can claim for any expenditure you consider necessary to perform your parliamentary functions. We do not provide a prescriptive list of items you can claim for, but we do say what you can’t claim for. [emphasis added]

Relevant aspects of the Scheme – procedure for making claims

40 29. Chapter Two of the Scheme contains some provisions dealing with the determination and review of claims. Paragraph 2.5 of the Scheme states as follows:

2.5 Where IPSA determines either to refuse a claim or to allow only part of the amount claimed, the MP may, within 14 days of IPSA issuing that notification, request IPSA to review its determination. Such a request may only be made on the grounds that:

- 5 a. the rules have been applied incorrectly; or
- b. an administrative error has been made by IPSA.

30. Paragraph 2.9 then provides that:

2.9 After giving IPSA a reasonable time to review the determination (as set out in paragraph 2.5) an MP may request that the determination is reviewed by the Compliance Officer.

31. In the light of these provisions, I have accepted Ms Emmerson’s submission that an MP is only able to complain of IPSA’s refusal to pay claims that fall within the “four corners” of the Scheme. I do not consider that an MP can complain that, because of the presence of special circumstances, IPSA should have exercised a discretion to pay a claim falling outside the terms of the Scheme. It follows that, since the Compliance Officer has to review IPSA’s determination, and there is a right of appeal to the Tribunal against the Compliance Officer’s determination, the Tribunal has no power to direct IPSA to exercise a discretion to pay claims falling outside the “four corners” of the Scheme.

32. Guidance within paragraph 2.1 of the Scheme itself deals with the question of whether IPSA will give “prior approval” of claims. That guidance states as follows:

IPSA will not provide prior approval of any claim, except where set out in the Scheme. Other than as noted in guidance, IPSA will not provide advice on whether a particular item is claimable.

33. That point is amplified, in the context of office costs expenditure, in guidance on paragraph 6.7 of the Scheme which states:

Other than as noted in this guidance, IPSA will not provide advice on whether a particular item is claimable from [the office costs expenditure budget].

34. I consider that the clear and ordinary meaning of the provisions referred to at [32] and [33] is that, unless IPSA gave specific official guidance on a particular claim (for example in the Scheme itself or in the Scheme Guidance), it would not grant pre-approval of any claim and would not provide advice on whether a claim would be paid or not. It therefore follows that IPSA made it clear in the Scheme itself that MPs could not rely on statements that IPSA staff members made as assurances that particular claims would be paid (unless, of course, those statements were reproduced in IPSA’s official written guidance). As I have found at [12], Mr Pignon had a genuine belief that IPSA intended those provisions to mean that he could rely on the assurances that he received from IPSA referred to at [11]. However, given the provisions of the Scheme I have referred to, I have concluded that this was an incorrect view and, since it conflicted with the ordinary meaning of those provisions, I consider that it was an unreasonable view.

The parties' competing arguments

35. Mr Byrne argued that the expense should be paid in full for the following broad reasons:

5 (1) MPs have a general duty to further the interests of their constituents. He had formed the genuine view that the interests of his constituents would be furthered by providing them with information on how to contact both him and their local councillors. The Respondent had taken too narrow a view of Mr Byrne's "parliamentary functions" which extended to matters that took place outside the precincts of Parliament. Moreover, the Scheme itself conferred a wide discretion on MPs relating to the incurring of office cost expenses. The consequence of the Respondent's unduly narrow approach would be to deter MPs from using their judgment to represent the best interests of their constituents and would necessitate a wholesale revision to the Scheme to clarify precisely what items are claimable and what are not.

(2) No claim could have been made to Birmingham City Council for any part of the costs of delivering the contact cards.

(3) Mr Pignon's telephone conversation with IPSA had created a legitimate expectation that the claim would be paid.

20 36. Ms Emmerson argued that the expenses should not be paid in full for the following broad reasons:

25 (1) The threshold requirement is that the expenditure be "necessary" for the performance of Mr Byrne's parliamentary functions. This is a strict and objective test: it is not simply inviting an examination of whether Mr Byrne thought he was sending useful information to his constituents. It was clearly "necessary" for Mr Byrne to provide his own contact details and surgery times to his constituents. However, applying the correct test, it was not "necessary" for him to provide details of local councillors. Therefore, the Respondent had been correct to allow half of the claim and to disallow the other half.

30 (2) As noted at [26], office costs expenses could be claimed only where the expenses concerned could not be claimed from other sources. Birmingham City Council had a budget available to pay the costs of circulating the councillors' contact details and therefore, to this extent, IPSA should not be required to pay the claim.

35 (3) The Tribunal and the Respondent are entitled to consider only whether the expenses claimed are allowable under the Scheme. Therefore, questions as to whether or not Mr Byrne had a legitimate expectation, following Mr Pignon's discussions with IPSA, that the claim would be paid are strictly not relevant to this appeal. In any event, because IPSA had made it clear in the Scheme that they would not give advice on whether particular items were claimable, it was not reasonable for Mr Pignon, or Mr Byrne, to rely on assurances that IPSA gave to them.

Discussion

Criteria to be applied in determining whether the expenses can be claimed

37. I consider that, for office costs expenditure, the following relevant principles apply:

5 (1) The expenditure must meet the detailed requirements of Chapter Six of the Scheme. For example, the expenditure must (after due regard is given to the MP's discretion referred to at [(3)] below) be for the purpose of meeting the costs of renting, equipping and running the MP's office or surgeries. The costs must not be claimable from other sources and the
10 costs must not fall within the specific list of excluded items set out at paragraph 6.6 of the Scheme.

 (2) The expenditure must be incurred wholly, exclusively and necessarily in or for the performance of "parliamentary functions". That test is not, however, a purely objective test as the MP has the discretion referred to at
15 [(3)]. Nor do I consider that, in using the expression "parliamentary functions", the Scheme is seeking to allow only expenses associated with duties in Westminster since the Scheme envisages that the costs of running constituency surgeries can be claimed. I therefore consider that an MP's
20 "parliamentary functions" include the discharge of any of any duties an MP has, including the duty to further the interests of his or her constituents (other than matters that the Scheme specifically excludes).

 (3) An MP has a discretion to determine what expenditure to incur under this heading and whether it is "necessary" to incur that expenditure in connection with his or her parliamentary functions. That is not, however,
25 an unfettered discretion. Firstly, it must be exercised reasonably. Secondly, the claiming of the expense in question must be consistent with the Scheme as a whole, including the Fundamental Principles and General Conditions.

 (4) However, an MP has no discretion as to whether expenses are incurred
30 "wholly and exclusively" in or for the performance of Parliamentary functions. That question must be determined by considering the actual purpose for which expenses are incurred.

38. I will expand on the above conclusion with some reasons.

39. As I have noted at [25], there is some uncertainty as to the precise formulation of
35 the test related to the expenditure being "wholly, exclusively, and necessarily" incurred. I believe that Fundamental Principle 2 makes it clear that there is a test of expenditure being incurred "wholly and exclusively". Even though the General Conditions require an MP to certify only whether expenditure is "necessary", I do not consider that the "wholly and exclusively" requirement can be elided not least since
40 that requirement appears in a Fundamental Principle. Fundamental Principle 10 makes it clear that the Scheme should not be interpreted in the same way as a taxing statute for example. I do not consider, therefore, that the Scheme intends to make fine distinctions between expenses that are incurred "in" the performance of parliamentary

functions and expenses that are incurred “for” the performance of parliamentary functions of the kind that taxing statutes frequently make.

40. Despite Ms Emmerson’s eloquent submissions to the contrary, I do not accept that the “wholly, exclusively and necessarily” test imposes a strict purely objective standard. Paragraph 6.5 of the Scheme (reinforced by Paragraph 3.3 of the Scheme) makes it clear that MPs have some discretion. Ms Emmerson emphasised that the discretion referred to in Paragraph 6.5 operates only “provided the claims meet the general conditions of the Scheme and the conditions of [Chapter Six]” and argued that this meant that, in all cases, the strict objective standard had to be met. However, I do not consider that this can be what the Scheme intends as Ms Emmerson’s interpretation would effectively mean that MPs have no discretion at all: the expenses would either satisfy her proposed objective standard or they would not. Her interpretation also is not consistent with the Scheme Guidance referred to at [28] which emphasises the importance of an MP’s subjective views on whether an expense is claimable or not.

41. Therefore, I consider that MPs have the discretion first to determine the kind of expenses that they wish to incur in renting, equipping and running their offices and surgeries and secondly whether those expenses are “necessary” for the performance of their parliamentary functions. However, that is by no means an unfettered discretion. If an MP exercises discretion in such a way as would result in a claim being paid in contravention of the Fundamental Principles or General Conditions (which would include an unreasonable exercise of discretion given paragraph 3.3(a) of the General Conditions), IPSA is not required to pay that claim.

42. I do not, however, consider that an MP has any discretion as to whether the “wholly and exclusively” aspect of Fundamental Principle 2 is met. While there might be a range of reasonable opinions on what expenses are “necessary” in, or for, the performance of parliamentary functions, whether expenses are incurred wholly and exclusively in or for the performance of parliamentary functions depends on the actual purpose for which the expenses were incurred. I do not see how any discretion can be relevant to that question. I consider this conclusion to be consistent with Judge Berner’s decision in *James McGovern MP v Compliance Officer for the Independent Parliamentary Standards Authority* [2013] UK FTT 206 (TC).

Whether the expenses were within the “four corners” of the Scheme

43. Having regard to Mr Byrne’s discretion, I consider that the costs of distributing the contact cards can fairly be described as costs of “running” an MP’s office (so as to meet the basic requirement of paragraph 6.1 of the Scheme). Ms Emmerson rightly emphasised that paragraph 6.1 refers only to the costs of running an MP’s own office or surgeries and she accepted that there could be no objection for a claim for the costs of sending Mr Byrne’s own contact details and surgery times to his constituents. She argued that Mr Byrne could not make any claim under the Scheme for the costs of running local councillors’ offices or surgeries. However, I do not consider that Mr Byrne is seeking to claim for the costs of local councillors’ offices or surgeries. He has a wide duty to further his constituents’ interests and his office is the medium

through which he engages with constituents to further their interests. Mr Byrne exercised his discretion to determine that his constituents' interests would be served by having a contact card that provided contact details both for himself and local councillors and therefore arranged for his office to distribute those cards. I consider that to be a reasonable exercise of his discretion and, accordingly, I accept that the costs incurred were the costs of "running" Mr Byrne's own office and not the offices of councillors.

44. In reaching the conclusion at [43], I am not determining that every expense incurred in sending potentially useful information to constituents is an expense of "running" an MP's office. For example, if the apparently "useful information" that an MP chooses to circulate is nothing more than self-promotion of the MP concerned, Fundamental Principle 9 may be engaged (as well as paragraph 3.4 of the General Conditions). The specific exclusion for "newsletters" in paragraph 6.6 of the Scheme will also have to be borne in mind, and it may well be that in providing for such an exclusion, IPSA were aware that "newsletters" could simply be a vehicle for self-promotion or political campaigning. However, I do not consider that there is any such objection to the circulation of bare contact details for the MP and local councillors.

45. Ms Emmerson suggested that the exclusion for "newsletters" indicates that there is a broad exclusion applicable to the circulation of factual information. I do not agree with that general submission. If the circulation of local councillors' contact details amounts to the circulation of a "newsletter" the same would be true of the MP's own contact details and it would follow that MPs could not be reimbursed even for sending their own contact details to constituents. IPSA cannot, therefore, have intended every circulation of factual information to be regarded as a "newsletter". I do not consider that these contact cards were "newsletters" or similar documents.

46. Ms Emmerson submitted that the expense could not be "necessarily" incurred for the purpose of Mr Byrne's parliamentary functions since those parliamentary functions do not include circulating the contact details of third parties. She also submitted that Mr Byrne has put forward no evidence at all as to how precisely he interacts with local councillors so as to demonstrate that the expenses were necessarily incurred. If the test as to whether expenses were "necessarily" incurred was a purely objective one, the absence of detailed evidence on this issue might well have been fatal to the claim. However, as I have noted, MPs are given some discretion as to whether it is necessary to incur particular expenses. No evidence is needed for the proposition that local councillors consider issues relevant to their constituents at local level. By providing local councillors' contact details to his constituents, Mr Byrne was enabling them to get in touch with people who could be expected to consider their interests. It was reasonable for him to conclude that this would further his constituents' interests.

47. Ms Emmerson's arguments related primarily to the "necessarily" limb of the "wholly, exclusively and necessarily test". For completeness, I am satisfied that the expenses were included "wholly and exclusively" in, or for, the performance of parliamentary functions. I see little, if any, evidence that the expenses were incurred for any purpose other than to further the interests of Mr Byrne's constituents

particularly given that the Respondent admits that Mr Byrne had no party political purpose.

48. I have considered carefully whether Mr Byrne has satisfied the burden of proving that the costs of sending the contact cards are not claimable from other sources. The Respondent made it clear in paragraph 4.13 of his Statement of Case that he is arguing that the costs in question are claimable from Birmingham City Council under its Members' Allowances Scheme. However, despite being on notice of this argument, Mr Byrne has produced no evidence on how the Council Scheme works. Moreover, he has not produced any evidence on other sources of funding generally and dealt very briefly with the Council Scheme in his submissions. In those circumstances, it is particularly important to be clear as to whether the burden of proof has been discharged.

49. While I quite agree with Ms Emmerson that the evidence Mr Byrne has produced is very scanty, I believe it is overstating matters to say that he has produced no evidence. Paragraph 3.2 of the Scheme provides that, in making any claim, an MP must certify that, in incurring the expenditure, he or she has complied with the Scheme. Therefore, the mere fact that Mr Byrne has made the claim is evidence of the fact that he considered the expenses to be claimable. Since MPs can be expected to turn their mind to the accuracy of confirmations that they are giving (particularly on the sensitive matter of expenses), the fact that Mr Byrne gave the confirmation is evidence (although not, of course, conclusive evidence) that all requirements of the Scheme were met.

50. Mr Byrne has the burden of proving that the expenses he is claiming could not have been claimed from any other source. To discharge that burden, he cannot be expected to lead evidence on every conceivable potential alternative source of funding and prove that, in fact, the expenses could not be claimed from that source. It would be practically impossible for Mr Byrne to discharge a burden in those terms. Rather, given that Mr Byrne has put forward at least some evidence that there was no alternative source of funds (namely his own confirmation to this effect when he made the claim), it is then for the Respondent to identify potentially relevant alternative sources of funds. Mr Byrne then has the burden of proving that the expenses could not be claimed from those alternative sources. In the context of this appeal, the Respondent has argued only that the costs could be claimed under the Council Scheme and supports his argument by reference to the written terms of the Council Scheme. It follows that, despite the modest amount of evidence that he has put forward, Mr Byrne can discharge his burden if I am satisfied that, by reference to the terms of the Council Scheme that the Respondent has put in evidence, the costs that Mr Byrne is claiming could not have been claimed from Birmingham City Council.

51. I have set out at [7] to [10] my findings on relevant aspects of the Council Scheme. I have concluded that the "additional expenses element" was a fixed sum that Birmingham City Council paid to each relevant councillor. It was not a pool of funds available to meet expenses on the making of a claim. Therefore, while the local councillors could certainly have decided on a voluntary basis to use some of their "additional expenses element" to contribute to the cost of distributing the contact

cards, neither Mr Byrne or the councillors could have made a specific “claim” for these expenses against Birmingham City Council. It follows that I have concluded that the expenses were not “claimable from other sources”.

52. The conclusions I have expressed at [43] to [51] lead me to the conclusion that Mr Byrne’s claim is within the “four corners” of the Scheme and his appeal succeeds for that reason.

The argument on “legitimate expectation”

53. Given my conclusion at [52], I do not need to consider Mr Byrne’s argument based on legitimate expectation. However, since the point was fully argued, I will express a conclusion on it.

54. I have already, at [31], accepted Ms Emmerson’s submission that the Tribunal has no jurisdiction to direct IPSA to pay a claim other than one falling within the four corners of the Scheme. It follows that as a matter of principle, the argument based on “legitimate expectation” does not succeed.

55. Even if the presence or otherwise of “legitimate expectation” were relevant, I do not consider that there could have been such an expectation in this case. Mr Pignon genuinely believed he could rely on IPSA’s assurances. However, the Scheme itself made it clear that he could not. There was no unequivocal assurance on which it was reasonable for Mr Pignon to rely and that is a further reason for not accepting the argument based on legitimate expectation.

Conclusion

56. My overall conclusion is that the appeal is allowed.

57. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

JONATHAN RICHARDS

TRIBUNAL JUDGE

RELEASE DATE: 18 JANUARY 2017