

# Appendix 1: ACA Review: Report by Sir Thomas Legg

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## ACA REVIEW

### Report by Sir Thomas Legg

1 FEBRUARY 2010

**Report to the Members Estimate Committee of the Review by Sir Thomas Legg KCB QC of the validity of payments of the Additional Costs (or 'Second Homes') Allowance made to Members of Parliament during the years 2004-05 to 2008-09, with recommendations for repayment.**

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# ACA REVIEW

## Report by Sir Thomas Legg

*To the Right Honourable the Speaker and the Members Estimate Committee of the House of Commons:-*

You appointed me in June 2009 to determine the validity of payments of the Additional Costs Allowance (ACA) made to Members of Parliament during the period April 2004 to March 2009, and to recommend any repayments which MPs should make.

An earlier version of this report was submitted on 16 December 2009. However, following your decision to allow MPs to appeal against my recommendations, you asked me to complete certain outstanding work during the appeal process and update the report to coincide as far as possible with the completion of that process. This final report therefore speaks from 1 February 2010.

This main part of my report sets out the background to my review, my approach and reasoning, and general remarks and considerations. My individual conclusions and recommendations about the 752 MPs and former MPs concerned are set out in the Annex.

I submit this report in the hope that it will contribute to restoring full public confidence in Members of Parliament, thus enabling the House of Commons to move forward with confidence in its vital role as the democratically-elected and leading branch of our national legislature.

## EXECUTIVE SUMMARY

1. I have carried out this review in accordance with my terms of reference, and as fairly as I can to the public purse on the one hand and to the 752 MPs and former MPs concerned on the other (paragraphs 35-36).
2. The ACA system was deeply flawed. In particular, the rules were vague, and MPs were themselves self-certifying as to the propriety of their use of the allowance. Taken with the prevailing lack of transparency and the ‘culture of deference’, this meant that the Fees Office’s decisions lacked legitimacy; and many of them were in fact mistaken (paragraphs 25-34, 52).
3. My remit calls for objective decisions on the validity of ACA payments. My conclusions and recommendations imply no reflection on the conduct or motives of individual MPs (paragraph 37).
4. By the same token, where I have judged ACA payments invalid, I have recommended that the MPs who received them should repay them in full. In his separate review, Sir Paul Kennedy has decided appeals from MPs claiming special reasons why repayments recommended by me should be remitted (paragraph 38).
5. An MP’s overall expenditure of the ACA was irrelevant to the validity or otherwise of the individual payments that he or she actually received. If invalid, such payments could not be legitimated by the fact that the MP receiving them did not claim up to the limit of the whole annual allowance (paragraph 39).
6. The ACA was and is an annual allowance based on financial years. There was no scope for carry-over, and under-claims in one year could not off-set over-claims in another. Nor could the ACA be used for expenditure only payable under other Parliamentary allowances (paragraph 40).
7. My remit requires me to apply the rules and standards governing the ACA during the review period. It is not open to me to question the main structure of the ACA, however questionable some aspects of it may now appear. Examples were the MP’s option to designate and re-designate his or her second home, the size of mortgages, and whether a second home was needed at all. These aspects will fall for decision by the Independent Parliamentary Standards Authority as part of the future system, in light of the report of the Committee on Standards in Public Life. During my review period, they were plainly permitted (paragraphs 41-42).
8. My review was excluded from dealing with issues under investigation before 20 July 2009 by the Parliamentary Commissioner for Standards or at any stage by the Police; nor has it dealt with tax aspects, which fall to HM Customs and Revenue (paragraphs 43-44).
9. A particular challenge has proved to be the widespread lack of proper evidence on the record from MPs to support substantial payments, especially of mortgage interest, even though this was expressly required by the rules (paragraph 46-47).

10. The interpretation of the rules and standards in force at the time is not straightforward. However, it is clear that, as well as the specific provisions of the Green Book, the rules and standards included fundamental principles which were also laid down and published by the House and its authorities at the time (paragraphs 51-53, 59-68).
11. These principles, taken together, amounted to the same general requirement of propriety in the use of public money which the House of Commons itself requires across government and the public sector (paragraph 69).
12. It followed, among other things, that the ACA could never be properly used as a supplementary source of income. It could only be used as reimbursement for specific and proportionate expenditure on accommodation needed for the performance of Parliamentary duties (paragraph 70).
13. Payments by the Fees Office which contravened these requirements breached the published rules and standards in force at the time. To hold such payments invalid is not to impose new rules retrospectively, but to apply *now* the rules that were properly in force *then*, but were overlooked or misunderstood at the time (paragraph 71).
14. For this reason, the fact that in some cases the Fees Office and MPs acted in apparent ignorance of the rules and standards then in force cannot cure the invalidity of the payments. Suggestions that MPs necessarily acted ‘in accordance with the rules’ simply because the Fees Office made payments to them, and even encouraged and endorsed their claims, are therefore misconceived (paragraphs 72-73).
15. Against this background, while most ACA payments appear to have been valid, a considerable number of them (a) could not initially be judged valid or invalid, in the absence of the necessary supporting evidence; or (b) were invalid because they breached specific Green Book rules; or (c) were invalid because they breached the essential requirement of propriety (paragraph 74).
16. Where essential evidence to support significant payments was lacking, MPs were requested to provide it. Most of those concerned have done so (paragraph 75).
17. In the few cases where they failed to do so on reasonable notice, and in the absence of special reasons to the contrary, the ACA payments involved have been determined to be invalid, and the whole allowance recommended to be repaid (paragraph 76).
18. However, MPs have not been requested to provide evidence which was not required at the time, or which it would be unreasonably disproportionate to request now (paragraphs 77-78).
19. Where ACA payments were clearly in breach of specific Green Book requirements, those payments have been judged invalid and the MPs who received them have been recommended to repay them. Many have already done so (paragraph 79).
20. Certain *de minimis* exceptions have been made for relatively insignificant payments (paragraph 80).

21. Where ACA payments were clearly in breach of the requirement of propriety, those payments have also been judged invalid, and the MPs who received them have been recommended to repay them. Many have already done so (paragraph 81).
22. Payments of disproportionate amounts for purposes secondary to the defined scope and purpose of the allowance thereby breached the requirement of propriety. Although the Fees Office applied acceptable limits in some such cases, such as the costs of furniture and household equipment, it failed to do so consistently in others, notably the costs of cleaning and garden maintenance (paragraph 82-83).
23. Proportionate limits on such expenditure must be taken to have been in force. Accordingly, payments in excess of £2,000 and £1,000 a year for cleaning and garden maintenance respectively in MPs' second homes have been judged disproportionate and therefore invalid (paragraphs 84-85).
24. A small number of cases involved conflicted transactions, where MPs used the ACA to buy or rent a second home from, or have works to it done by, a relative, business associate or employee. The use of the ACA in such circumstances also breached the requirement of propriety, and the view has been taken that in such cases the whole allowance ought to be repaid (paragraphs 86-88).
25. The broad picture that emerges from the review is that, out of the £55.5m. spent on the ACA during the review period, just over £1.3m. has been recommended for repayment and almost £800,000 has already been repaid, although this includes some excess repayments (paragraph 96-97).
26. 48% of the 752 MPs and former MPs concerned have no issues arising from the review and 52% have been recommended to make repayments (paragraph 99).
27. Three MPs have been recommended to repay sums over £40,000, the highest being just under £65,000; 56 MPs have been recommended to repay sums between £40,000 and £5,000; 182 MPs have been recommended to repay sums between £5,000 and £1,000; and 149 MPs have been recommended to repay sums between £1,000 and £100 (paragraph 100).
28. The overall effect of Sir Paul Kennedy's decisions to remit repayments will be to reduce the total amount repayable under my recommendations by just under £185,000 (14%) to £1.12m., and will bring the highest single recommended repayment down to £42,458 (paragraph 102).

## INTRODUCTION

### Remit

1. On 23 June 2009, the Leader of the House, Ms Harriet Harman MP, referring back to earlier statements about Parliamentary expenses and allowances, said that “On payback, work has begun by Sir Thomas Legg, who has been contracted by the House authorities to lead a reassessment of all claims over the over the last four years and, having reconsidered each claim and the evidence submitted to support it, to report back whether it was within the rules as they obtained at the time, with a view to ensuring that where there has been overpayment, it is paid back. The public expect that over-claims will be paid back, and that will happen, together with any necessary disciplinary action” (Official Report, Col. 678).
2. On 30 June, the Members Estimate Committee (MEC) confirmed that the terms of reference of my review would be:-
 

*‘To conduct an independent review of all claims made by Members of Parliament (except those who have since died) for the Additional Costs Allowance during the financial years 2004-05 to 2007-08;*

*To examine all payments made on such claims, against the rules and standards in force at the time, and identify any which should not have been made, and any claims which otherwise call for comment;*

*To allow Members who received such payments or made such claims a fair opportunity to make representations about them;*

*Subject to any such representations, to recommend where necessary any repayments which Members should make and otherwise to comment as seems appropriate; and*

*To report as soon as possible to the Members Estimate Committee.’*
3. The following day, 1 July 2009, the establishment of the review was announced to all Members of Parliament by letters and to the public by a press release.
4. On 20 July 2009, the Members Estimate Committee amended my terms of reference to include in the review the financial year 2008-09, and to exclude from it any payments under investigation by the Parliamentary Commissioner for Standards before 20 July 2009, or at any stage by the Police. This too was announced to MPs.
5. It is important to notice that my review only covered the ACA. It did not cover any of the other Parliamentary allowances, namely those for staff, offices, communications, travel and redundancy.

### Personnel

6. My own background has been as a government lawyer in the Lord Chancellor’s Department (now the Ministry of Justice). I served as its Permanent Secretary, and

therefore as its Accounting Officer, from 1989 to 1998. During most of my 36 years in the Department, I worked in the Palace of Westminster. As Permanent Secretary, I was also Clerk of the Crown in Chancery and, as such, an officer of both Houses of Parliament. After that, I served for nearly ten years on the House of Commons Audit Committees. In that capacity, my concern about the system of MPs' expenses, dating from 2004, the first year the Committee had jurisdiction in the field, is on the public record.

7. My supporting team for this review ranged in number from 54 down to 10 over the successive phases of the task. It was widely based, and included colleagues drawn from PricewaterhouseCoopers, various branches of the House service, including the Department of Resources and the Internal Audit team, and former members of the Office of National Statistics. The discussions leading to the development of my approach to the system and rules included observers from the National Audit Office, and in determining individual cases I received critical challenge from a representative of the Audit Commission.

### **Tributes**

8. While taking full personal responsibility for the review and for this report, I received invaluable assistance from the review team, and I am very grateful to them all. I pay especial tribute to Edward Wood (Project Director), Paul Dillon-Robinson (Head of Internal Audit), Paul Smith (Project Manager), Edwin Harland (PwC) and Michael Haworth-Maden (Audit Commission).
9. I would also like to record my thanks to the support services of the House of Commons and, also and especially, to the numerous individual MPs concerned who co-operated with my review.

## **BACKGROUND**

### **History of the ACA**

10. MPs with constituencies outside Inner London have to divide their time between Westminster and their constituencies and, as a result, can incur additional costs, either on hotels, renting a flat or buying a second home. This expenditure is necessary to enable them to carry out their Parliamentary duties.
11. That is the purpose of the ACA. During my review period, all MPs could claim it except those representing Inner London constituencies, who instead received a London supplement in their salaries. MPs representing outer London constituencies could choose whether to claim ACA or the London supplement.
12. Like other Parliamentary allowances, the ACA was administered and managed by the Operations Directorate of the Resources Department of the House of Commons, usually known (and referred to in this report) as the Fees Office.

13. The ACA was first introduced by Resolution of the House in 1971 to cover the reasonable additional costs of provincial MPs of staying either in London or their constituency, when engaged on Parliamentary duties. The Top Salaries Review Body had proposed that the allowance should take the form of a daily subsistence rate. The Government, however, proposed a scheme which reimbursed expenses within an annual limit.
14. This annual limit was at first set at £750, from 1 April 1972. Over the years, this maximum was increased in various ways and by various amounts. For the five years now under review, the maximum rates of ACA were:-
  - 2004/05 – £20,902
  - 2005/06 – £21,634
  - 2006/07 – £22,110
  - 2007/08 – £23,086
  - 2008-09 – £24,006
15. In 1983, the ACA was exempted from income tax by section 28 of the Finance Act of that year, now embodied in section 292 of the Income Tax (Earnings and Pensions) Act 2003.
16. In 1985, the key step was taken of allowing the ACA to be used to help purchase second homes, as opposed to renting them or staying in hotels. MPs were advised that there was no reason why they should not claim mortgage interest payments against the ACA. Thereafter, the rules and practice gradually expanded the scope of this provision, so as to allow expenditure on such matters as mortgage increases to fund improvements, new mortgage products, and so on.
17. In its report of January 2008, the Senior Salaries Review Board noted (paragraphs 5.54-5) that “Although... we have received no substantive evidence of abuse, we are concerned that it is in the areas of ACA that the greatest scope for abuse is thought to exist... this element of the expenses regime gives rise to more problems and misunderstandings, both within and outside the House, than any other and a fuller review of the ACA might be appropriate”.
18. In its judgment of May 2008 on the disclosure of information about the ACA requested under the Freedom of Information Act 2000 (*Corporate Officer v. Information Commissioner and others*, TLR 22 May 2008), the Divisional Court held that it was the “deep flaws in the [ACA] system identified by the [Information] Tribunal which had so convincingly established the necessity of full disclosure”, tipping the balance against the interests of MPs in privacy and in favour of allowing public scrutiny.
19. Against this background, the MEC’s own Review of Allowances recommended in June 2008 (HC 578-1) that the ACA should be adapted into an overnight expenses allowance, comprising a £19,600 maximum budget for accommodation (excluding furniture, household goods, and capital improvements) but operating on the basis of itemised reimbursement and a flat rate of £30 for daily subsistence. In its subsequent debate on the Review, on 3 July 2008, the House implicitly rejected this recommendation.

20. More recently, however, on 20 May 2009, the MEC in effect reversed this decision and, on the recommendation of the Leader of the House, imposed immediate curbs on the ACA pending the conclusions of the then current further review of allowances by the Committee on Standards in Public Life (CSPL). But these curbs were not, of course, in force during my review period.
21. In July, the Parliamentary Standards Act 2009 was passed, to establish the Independent Parliamentary Standards Authority (IPSA), to set and manage the whole system of MPs' expenses and allowances in future.
22. On 4 November 2009, the CSPL made its report to the Prime Minister on MPs' Expenses and Allowances (Cm 7724), proposing a new framework of rules for this purpose. In January 2010, IPSA published its own consultation paper with a view to establishing the new system, if possible in time to take effect to coincide with the new Parliament to be elected this year.

### **Usage of the ACA**

23. The MEC's Review of Allowances in June 2008 gave a useful snapshot of how the ACA was being used about half-way through the review period.
24. In 2006-07, 621 MPs were eligible for ACA, and 589 did in fact claim it. 415 MPs (70%) of those claimed for mortgage interest payments. 133 MPs (23%) claimed for rent and 12 MPs (2%) for hotels. 80% of claiming MPs registered their second home in London, the remaining 20% in their constituencies. 45% of claiming MPs claimed all or almost all the full allowance (then £22,110), and nearly two-thirds claimed over 90%. Of those who claimed, the average spend was £19,375 (88% of the maximum).

### **Flaws of the system**

25. In May 2009, after the House had decided to accept the judgment of the Divisional Court that records of MPs' expenses could not be withheld under the Freedom of Information Act, but before its own planned release of 'redacted' versions of these records, the Daily Telegraph published voluminous and detailed stories of MPs' claims and payments, apparently sourced by someone with authorised access. This publication brought many of the key dealings of MPs with the ACA and other allowances into the public domain. There followed, and continues, widespread criticism of the way the system appears to have worked to the excessive and unjustified benefit of MPs.
26. This criticism has been recognised by the major changes already made last year and mentioned above, which will no doubt carry forward into greater changes to come, in the light of the CSPL report and the establishment of IPSA. The scene has thus changed considerably in recent months. However, during the period subject to this review, as both the Information Tribunal and the Divisional Court also found, there were 'deep flaws' in the whole ACA system. These included (a) the vagueness of the rules; (b) the weakness of the position occupied by the Fees Office in administering the allowance; (c) the lack of transparency; (d) the lack of audit; and (e) the special position of MPs as self-certifying the propriety of their own expenditure.

*Position of the Fees Office*

27. The problems about the rules are dealt with in more detail below. Alongside those problems, the authority and legitimacy of the Fees Office was much less than seems to have been realised by most MPs at the time. These officials were not Civil Servants with an independent duty to, and accountability for, the public purse. They were servants of the House and, while of course supposed to observe and apply its rules, they were also in practice expected to do so in the ways most beneficial to the MPs whom they were there to serve. The CSPL report has spoken of a ‘culture of deference’, and my own view over the years, on the Audit Committee and conducting this review, has been that this expression is justified.
28. The Fees Office was therefore vulnerable to the influence of higher authorities in the House of Commons, from the Speaker down, and of individual MPs. In practice during most of the review period, these influences tended more towards looking after the immediate interests of MPs than to safeguarding propriety in public expenditure.

*Position of MPs*

29. But the problem went deeper than that. Throughout this period, alone across the entire public service, MPs were self-certifying as to the propriety of their own expenditure. They were both entitled and personally responsible for ensuring that the moneys they drew in allowances were properly spent for the purposes voted.
30. The Speaker’s Introductions to successive Green Books confirmed this, stating that “Members themselves are responsible for ensuring that their use of allowances is above reproach”. In spite of suggestions to the contrary in some of the same Introductions, it therefore seems doubtful how far the Fees Office actually had any effective function or authority beyond advising MPs how to use the ACA and other allowances. They did sometimes purport to reject doubtful claims, but just as often they paid them and then sought to persuade the MP, sometimes successfully and sometimes not, to change or withdraw the claim. In addition, the Fees Office operated an extremely generous system whereby over half the annual maximum of the ACA could be paid over without requiring the MP to provide any receipts at all.

*Lack of audit*

31. Another consequence of the sovereignty of individual MPs over their own use of the allowances was another unique feature, which was strongly defended during most of the review period. This was that there was no audit of any kind of the individual use by MPs of the ACA or any other Parliamentary allowance. Neither internal nor external auditors could ‘go behind the Member’s signature’. This was recognised by the National Audit Office. The Clerk of the House, as Accounting Officer, made clear in his Statement of Internal Control that he could not vouch for the use of MPs’ allowances. Only last year did the House resolve to introduce a full audit system, and this is still in process of being implemented.

*Lack of transparency*

32. Moreover, as is well known, there was at the same time very limited transparency about the use made of all Parliamentary allowances. It was not until the judicial decisions of

2008 that the Freedom of Information Act began to allow more light on the way the system worked. This too was a further factor undermining the ACA system.

*Resulting effect*

33. In these circumstances, the inter-relationship of the Fees Office and the claimant MPs was symbiotic. Each influenced the other, with the overall result that the ACA was administered in a way that was far more generous than was envisaged or allowed by its own governing principles.
34. Thus, the fact that the Fees Office paid the ACA to MPs, and often explicitly endorsed and encouraged their claims, is of considerably less significance in legitimating ACA payments than seems to have been realised either at the time or since. And of course in those cases where the payments were made in breach of the rules in force at the time, as quite a number of them were, it cannot cure the consequent invalidity of the payments.

## **THE TASK AND THE PROCESS**

**Approach and scope**

35. My remit required me to interpret the rules and standards in force during the review period, to apply them as so interpreted to every one of the payments of the ACA made during the review period, to determine which of these payments was valid and which of them invalid, and where appropriate to recommend repayment.
36. I have done my best to perform this task in strict accordance with my terms of reference, and with fairness to the public purse on the one hand, and to the 752 MPs and former MPs concerned on the other.

*No reflection on individual MPs' conduct or motives*

37. It is important to make it clear at the outset that my remit necessitates what amount to a series of objective quasi-judicial decisions on the validity of the payments made by the Fees Office. These decisions are essentially legal and not ethical, and impute no specific fault or blame. My conclusions and recommendations therefore imply no reflections on the conduct or motives of individual MPs. In so far as such issues arise, they are for others to judge. Where I have recommended repayment, the position is analogous to under-payments of tax or over-payments of social security benefits, where the citizen is liable to pay or repay regardless of his or her intent.

*Repayment recommended in full*

38. By the same token, once having determined an ACA payment to be invalid, I have in every case recommended that the MP who received it should repay it in full. This is on the basis that, by definition, the money should not have been disbursed, and ought to be restored to the public purse, which was its rightful owner throughout. Shortly before the completion of my main review, the MEC commissioned the Rt. Hon. Sir Paul Kennedy to decide appeals from MPs claiming special reasons why repayments should be remitted (see further paragraph 101 below).

*Irrelevance of overall expenditure*

39. An MP's overall expenditure of the ACA, or of any of the other Parliamentary allowances, was irrelevant to determining the validity or otherwise of the individual payments that he or she actually received, which is the task that my remit gives me. Several MPs have suggested to me that, because they did not claim up to the full annual limit of the ACA or other allowances, but could legitimately have done so, the invalid payments that they did receive are thereby in some way themselves legitimated. That argument seems plainly unfounded, since otherwise a single grossly improper payment for (say) £10,000 could be validated by the fact the MP receiving it made no other claim that year and could demonstrate after the event that he might have done so.

*Annuality of the ACA*

40. Another feature of the ACA that is relevant to the validity of payments is that it was and is granted and expended on an annual basis by reference to financial years. There was therefore no scope for carry-over between one year and the next. Under-claims in one year could not be used to off-set over-claims in another. Nor, of course, could the ACA be used for expenditure which was only payable under another Parliamentary allowance.

*Acceptance of ACA's main structure*

41. My terms of reference also carry another implication. Limiting my remit to the rules and standards in force at the time means that it is not open to me to question the main structure of the ACA, however questionable some aspects of it may appear in hindsight. Major examples were the power given to MPs to choose which home to designate as their main and which as their second home, and then to 'flip', ie change the designation, to suit their own convenience; allowing mortgages of very large houses; or financing MPs to rent or buy houses when they already owned quite sufficient accommodation in their private capacity. Nor was it within my remit to question the provision of the ACA to MPs who were also serving as senior Ministers and in that capacity enjoyed accommodation in 'grace and favour' residences.
42. Thus, while I can and must apply the internal rules of the ACA system properly, which means in some cases differently from the way they were applied at the time, I cannot retrospectively put right its wider structural defects. Nor do I thereby impliedly defend or condone them. Sorting them out is a task for the future, and will be dealt with, not by this review, but by IPSA, in light of the CSPL report. During my review period, they were plainly permitted by the rules of the allowance.

**Other investigations**

43. My terms of reference expressly excluded me from dealing with ACA payments where the MP concerned was under investigation before 20 July 2009 by the Parliamentary Commissioner for Standards, or at any stage by the Police. Because these investigations are conducted in confidence, mainly for the protection of the MPs concerned, I have not drawn attention to such issues where the investigation is or was still ongoing. I have also regarded issues previously dealt with by the Committee on Standards and Privileges as outside my remit, as having been already adjudicated by or on behalf of the House. I have equally not looked into issues of tax, and especially Capital Gains Tax, which are the province of HM Customs and Revenue.

44. Accordingly, where an MP had been referred to the Commissioner for Parliamentary Standards before the start of my review, or is or has been under investigation by the Police at any stage, the issue under investigation by the Commissioner or the Police has been automatically taken out of my jurisdiction. It is therefore important to register that, just because my review has not raised a particular ACA issue with an individual MP, sometimes with the result that my own conclusion is ‘no issues’ at all, it does not follow that those other regulatory authorities may not be looking into ACA issues of their own about that MP.

### **Scale**

45. The scale of the review has been substantial, and this has accounted for the time it has taken, which was longer than at first hoped. The raw material in the Fees Office records for the five years in question included nearly 147,000 individual items of claim by 752 serving and former MPs. After the sifting process described below, some 2,345 individual items were put to me and my senior assistants for consideration. I personally considered every item put to every MP in the provisional stage, and all the items listed in the Annex to this report, which in the end included 665 overpayments recommended for repayment. However, the sheer bulk of the task, taken with its novelty and complexity, means that, although all practicable precautions have been taken, there remains a residual risk of errors.
46. The quality of the Fees Office’s document management was very variable, and there are significant gaps and omissions in the records. That is one reason why it was essential for me to show my provisional conclusions to the MPs concerned, so as to give them a full opportunity to help me with any necessary corrections – as in many cases they did. I fully accept that MPs themselves could not fairly be expected to keep full records of every one of these transactions, however minor, especially after several years, but at least the process helped to minimise the risks of inaccuracy.
47. One particular challenge was not foreseen, and has complicated and delayed the process. It soon became clear that in many cases the Fees Office records did not include vital supporting evidence for what in the aggregate were payments of substantial sums of public money. The outstanding example is mortgage interest and rental statements, without which it is impossible to be sure that ACA payments were correct. There is therefore a large class of cases where the MPs concerned have had to be requested to produce (or re-produce) the evidence needed.

### **Process**

48. The process followed in this review has been to sift the Fees Office records by defined stages, submitting every item to quality assurance, deleting non-issues and elevating the remaining issues to the next stage. This was done in accordance with criteria proposed by PwC and initially tested by an Assessment Panel composed of experts drawn from various internal and external quarters, including observers from the National Audit Office. The process of quality assurance and elevation continued until the issues remaining reached me for personal determination, in many cases with the help of my critical challenger from the Audit Commission.

49. Having formulated my provisional conclusions, I sent them on 12 October 2009 to every MP and former MP concerned, together with a covering letter and explanatory note, and invited their comments and representations within three weeks, that is by 2 November. Neither then nor at any stage have I purported to ‘demand’ repayments from MPs, which would have been beyond my remit and authority. In reply to my provisional conclusions, I and my team received a large number of comments and representations from MPs, together with many voluntary repayments, and also supporting evidence where I had suggested that it was required. I have personally considered all these comments and representations.
50. I sent all the MPs concerned advance notice of my final conclusions concerning each of them individually, as set out in the Annex to this report.

## **INTERPRETATION OF THE RULES**

### **Nature of the task**

51. My remit requires me to apply the ‘rules and standards in force at the time’, ie during the review period of 1 April 2004 to 31 March 2009. For this purpose, I have had to interpret and determine what those rules and standards actually were at the relevant time.
52. This is by no means a straightforward task. As already mentioned, among the flaws in the whole system noted by the judicial authorities was that the rules governing the allowance were vague, incomplete and inadequate. Although some of them were straightforward enough, there were also gaps and tensions between their separate elements. These are difficult to reconcile, and this in turn complicates the task of interpreting and applying the rules.
53. However, as will be seen, my judgment is that one major strand of the rules and standards in force at the time was a requirement of propriety in the use of public money, that this requirement was not given full and effective weight in the administration of the ACA, and that this failure invalidated many payments.

### **Elements of the rules**

54. To understand this, the rules and standards in force during the review period must be seen as a whole. They consisted of three elements: (a) the ‘Green Book’, which set out rules based on Resolutions of the House; (b) the practice of the Fees Office in interpreting and applying the rules; and (c) certain fundamental principles, also in the Green Book or otherwise approved by the House or the Speaker on its behalf, or contained in the Code of Conduct adopted by the House in 1995.

## Green Book

### *Nature of the rules*

55. The Green Book set out a framework of more or less specific, though not exhaustive, rules under which the ACA, with the other Parliamentary allowances, was to be administered. Derived from Resolutions of the House, and amended and updated from time to time over the review period, these rules were clear enough as far as they went. But they did not cover the whole ground, and perhaps were not intended to; many of them have the appearance of general guidelines rather than a detailed code.

### *Scope and purpose of the ACA*

56. However, the relevant section of the Green Book began with a provision which is basic to the interpretation of all branches of the rules. This defined the scope and purpose of the ACA as follows:- *“The allowance reimburses Members for expenses wholly, exclusively and necessarily incurred when staying away from their main UK residence for the purpose of performing Parliamentary duties. This excludes expenses that have been incurred for purely personal or political purposes”* (formulation of April 2005).

### *Remaining provisions*

57. The remainder of the Green Book set out provisions under such headings as eligibility, documentation needed, allowable expenditure, definition of ‘main home’, and examples of expenditure allowable under ACA.

## Practice of the Fees Office

58. The practice of the Fees Office supplemented the Green Book rules, in line with rulings and guidance from the House authorities. Thus, for example, as mentioned above, the Fees Office normally allowed claims of up to £250 a month for certain heads of expenditure, and up to £400 for food, without receipts (until 2008-09, when the limit for all heads was re-set at £25). It also applied, although MPs were never officially informed of it, the so-called ‘John Lewis list’ as a benchmark of acceptable cost for certain household purchases, above which claims were to be rejected. The Fees Office did reject some claims, but it operated under the disadvantages, and in the climate and culture, described above under the heading ‘flaws of the system’.

## Fundamental principles

59. At the same time as the Green Book rules and the practice of the Fees Office, the ACA system was also governed by overriding fundamental principles laid down by the House and its authorities, and published and available at all times to the Fees Office and MPs. Although general in character, they were an integral and binding element of the rules and standards in force throughout the review period.

### *Necessity*

60. The most basic principle was the requirement, stated in the Green Book throughout and also derived from the Resolutions of the House, that all claims for ACA should be for expenses ‘*necessarily*’ incurred in the performance of Parliamentary duties. When the Green Book was revised in July 2006, this was expanded to make the requirement

that the expenses must have been ‘*wholly, exclusively and necessarily*’ incurred in such performance. This extension is difficult to apply to accommodation, and I have not given it great weight. The requirement of necessity, however, is clearly relevant, applicable and binding. It implies, among other things, that the ACA was not to be used for any expenditure which was extravagant or luxurious.

### *The Code of Conduct*

61. On 19 July 1995, the House passed a Resolution adopting a Code of Conduct for Members of Parliament. The Code has at all times since then required MPs to observe the ‘Nolan’ principles of conduct in public life. Among these, ‘selflessness’, ‘accountability’, ‘honesty’ and ‘leadership’ are plainly relevant to claiming and receiving Parliamentary allowances. The Code was undoubtedly intended to apply to MPs’ conduct in relation to allowances, including as it did from the start provisions expressly referring to them.
62. The relevant Nolan principles in full are:-
- Selflessness.* Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.
- Accountability.* Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- Honesty.* Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- Leadership.* Holders of public office should promote and support these principles by leadership and example.
63. The Code of Conduct was re-issued twice, in May 2002 and July 2005. However, although the drafting and layout was altered on these occasions, the only relevant substantial amendment was to the article expressly about allowances (now Article 14). This had previously provided that “No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules which apply to such payments must be strictly observed.” In 2005, this was altered to provide that “Members shall at all times ensure that their use of expenses, allowances, facilities and services provided from the public purse is strictly in accordance with the rules laid down on these matters, and that they observe any limits placed by the House on the use of such expenses, allowances, facilities and services”. As far as the ACA is concerned, this does not appear to have been a major change from the pre-2005 provision.
64. I am clear that the Code was a binding element in the rules and standards governing the ACA at all times after 1995. I am also clear that in practice the Code was given insufficient weight in the administration of the allowance.

### *The Speaker's introduction*

65. Another source of fundamental principles was the Speaker's introduction to the Green Book. In particular, in all relevant editions up to 2006, he stated that "*Members themselves are responsible for ensuring that their use of allowances is above reproach*". In July 2006, ie about half-way through the review period, this requirement was incorporated into the body of the Green Book but, in view of the Code of Conduct and the self-certifying power of MPs, it must be treated as having normative force throughout the review period. The Speaker also cautioned MPs to "seek advice in cases of doubt and read the Green Book with care".

### *Further principles*

66. Also at the time of the July 2006 revision, a new section was introduced to the Green Book, headed "Principles". This provided as follows:-

*"You must ensure that arrangements for your ACA claims are above reproach and that there can be no grounds for a suggestion of misuse of public money. Members should bear in mind the need to obtain value for money from accommodation, goods or services funded from the allowances.*

*You must avoid any arrangement which may give rise to an accusation that you are, or someone close to you is, obtaining an immediate benefit or subsidy from public funds or that public money is being diverted for the benefit of a political organisation."*

67. In the light of the previous and already operating principles, these additions appear only to have made explicit for convenience what was already implicit, and I therefore consider that they too formed a part of the fundamental principles in force throughout the review period.

### *Summary of the fundamental principles*

68. In short, MPs were thus personally required to ensure, and it was the duty of the Fees Office to help them ensure, that their use of the ACA throughout the review period was:-
- a) necessary for the performance of their Parliamentary duties;
  - b) in accordance with the Nolan principles of selflessness, accountability, honesty and leadership;
  - c) strictly in accordance with the rules governing the allowance;
  - d) above reproach;
  - e) took account of the need to obtain value for money; and
  - f) avoided any appearance of benefit or subsidy to the MP or anyone close to him or her from public funds, or diversion of public money for the benefit of a political organisation.

### **The requirement of propriety**

69. These principles, taken together, clearly amount to at least the same general requirement of propriety as the House of Commons itself rightly expects and enforces across government and the public sector. 'Propriety' here means the proper handling of public money, in the sense used by the Public Accounts Committee and the National Audit

Office (see, for example, *Propriety and Audit in the Public Sector*, Public Audit Forum, August 2001; and *Regularity, Propriety and Value for Money*, Treasury Officer of Accounts, November 2004). The accountable stewardship of public money is a primary obligation on all public servants, elected or appointed, and especially on those who can reasonably be expected to set an example in that respect. It is therefore not surprising that, in making the laws governing the ACA, the House of Commons subjected the grant of the allowance to the same conditions as apply to the use of taxpayer's money throughout the public service.

70. It followed from this that all ACA payments had to be compliant with the requirement of propriety, which carried with it, among other consequences, that they had to be within the defined scope and purpose of the allowance. And it followed in turn from this that the ACA was never to be available as a supplementary source of income. It could only be properly paid as a support for specific and proportionate expenditure on accommodation needed for the performance of Parliamentary duties.
71. Payments by the Fees Office that contravened these requirements were therefore made in breach of the rules and standards that were in force at the time, published and available for inspection. To hold such payments invalid is not to impose a new rule retrospectively. It is simply to apply *now* the rules that were properly in force *then* but were overlooked or misunderstood at the time. The fact that the Fees Office and self-certifying MPs acted in apparent ignorance of the true rules applicable in these cases is regrettable, but cannot cure the invalidity of the payments.
72. It is important to underline this point, because MPs who drew the ACA tend to assert, doubtless in good faith, that because their claims were granted, and even expressly endorsed and encouraged, by the Fees Office, the payments they received were within the rules and must therefore have been valid.
73. In any event that would not follow, but it especially does not follow in these circumstances, where the rules were so vague, the Fees Office was so weakly placed to enforce them, and MPs were themselves the self-certifying and responsible guardians of those funds as well as their recipients. Of course the words and actions of the Fees Office might well constitute a defence against charges of deliberate abuse by the MPs concerned. But that is an issue separate from the validity or otherwise of the payments and not for this review.

## **APPLICATION OF THE RULES**

74. Against this background, most of the individual ACA payments made by the Fees Office to MPs during the review period appear in fact to have been valid. However, a considerable number of them either (a) could not initially be judged valid or invalid, because they were not supported by sufficient evidence, as required by the Green Book; or (b) had to be judged invalid because they breached specific Green Book rules; or (c) had to be judged invalid because they significantly breached the vital requirement of propriety.

### **Insufficient evidence**

75. The most important single class of evidence to support ACA payments is mortgage interest statements. These statements are essential to support what were cumulatively substantial payments from the public purse, and their production was and is an explicit requirement of the Green Book. Other similar types of essential supporting evidence include rental statements and completion statements on sales and purchases of houses and flats. ACA payments made in such cases cannot be regarded as valid unless and until these essential records are supplied. Bank statements or other secondary evidence are insufficient for this purpose. MPs who did not produce these records at the time, or where the records for whatever reason could not be found in the Fees Office's files, have therefore been requested to produce (or re-produce) them now. Most of the MPs concerned have now done so. Where they did so in time before the completion of this report, the resulting position has been calculated and the MPs concerned have been listed either as having no issues or recommended to make any repayments apparently due.
76. In fairness to the MPs concerned, it was important to allow them a reasonable amount of time to obtain the records from their mortgagees, landlords, etc. However, that time has now been allowed. In the few cases where even now an MP has been unwilling or unable to produce such records, then in the absence of special and exceptional reasons to the contrary, my recommendation is that the payments concerned should in default be determined to be invalid, and the MP should repay the whole of the allowance. In determining whether there are such special and exceptional reasons, I have had to make a discretionary judgement, taking a pre-determined list of relevant factors into account.
77. More broadly, however, it would be neither reasonable nor realistic to require supporting evidence in all cases, however minor, given the multiplicity of claims and the lapse of time since much of the review period. I accordingly decided, for the purposes of this review, not to go behind the practice of the Fees Office before 2008-09 of not requiring receipts for a variety of expenditures less than £250 a month, and £400 in the case of food. However, where subsequent claims or other evidence suggest that such earlier payments may have been materially incorrect (as has happened in a number of cases following the change to a £25 limit in 2008-09), I have requested that evidence should be provided to substantiate the earlier payments.
78. In addition, on a *de minimis* basis, I have not requested further supporting evidence for single payments before 2008-09 of less than £1,000 not forming part of a larger pattern, and where there is no other reason to doubt the validity of the payment. This implies no judgment about the validity of the payments concerned, but merely a recognition that it would not now be a proportionate use of public resources to pursue the evidence for such payments further.

### **Breach of specific rules**

79. Where a payment made by the Fees Office was incorrect on the face of it, by reference to specific rules in the Green Book, I have determined it to have been invalid and recommended the MP who received it to repay the amount involved. Many MPs have already done so.

80. However, here too and on the same basis, certain *de minimis* exceptions have also been allowed. These are:-
- a) single payments of less than £100, erroneous under the Green Book rules, but not cumulative with others forming part of a larger connected pattern; and
  - b) standing charges for utilities, council tax, etc. (but not more significant items like mortgage interest statements) mistakenly claimed during the Dissolution in 2005.

### **Breach of principles**

81. Where a decision or practice of the Fees Office was significantly contrary to the fundamental principles set out in the rules or the Code of Conduct, I have determined the payment made to have been invalid, for the reasons explained above, and recommended the MP concerned to repay the amount involved. Many have already done so.

#### *Disproportionate payments for secondary items*

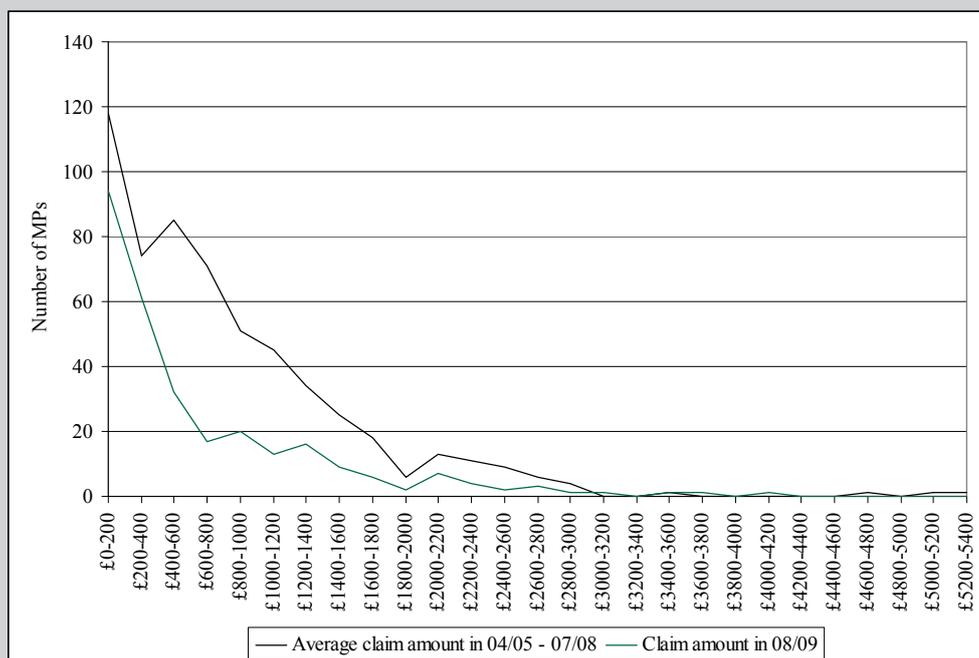
82. One frequent example of this was the regular failure of the Fees Office to apply proper limits to disproportionate claims. The defined scope and purpose of the ACA, taken with the requirement of propriety, entailed throughout that, for purposes legitimate in themselves but secondary to the central aim of providing accommodation, limits must be regarded as having been in place to prevent disproportionate and unnecessary expenditure from the public purse. The failure to apply these limits amounted, in effect, to treating the ACA as a supplementary source of income, and not as what it properly was, namely an allowance for specific and proportionate purposes.
83. In some areas, such as household furniture and equipment (as mentioned above), the Fees Office did in fact usually impose such limits. In others they failed to do so, at least consistently, and in these areas my review has had to establish the limits which must be taken, in compliance with the rules then in force, to have been in place at the time for certain recurring heads of subordinate expenditure. Two cases especially in point are cleaning and garden maintenance.

#### *Cleaning*

84. On this basis, I have regarded payments for cleaning in the second home as acceptable up to £2,000 a year, but beyond that I have held them to have been disproportionate and therefore invalid, and recommended them to be repaid. (It may be worth noting that 93% of those MPs who claimed cleaning costs at all in fact stayed within that limit.) Of course there was nothing to stop MPs spending more than £2,000 a year on cleaning. However, given the purpose and amount of the ACA, it does not seem appropriate for them to have expected to be reimbursed for doing so at public expense.

#### *Garden maintenance*

85. Similarly, I have regarded payments of up to £1,000 a year as having been acceptable for garden maintenance, but above that limit as invalid and recommended them to be repaid.



### CLEANING

Over the period of the review, 93% of MPs who made claims for cleaning had an average annual claim value of less than £2,000 per annum. Therefore 1 in 14 MPs claimed over £2,000 per annum, a total of 41 of the 574 who claimed for cleaning.

It is noteworthy that total claims for cleaning fell significantly in 2008/09, in comparison with earlier years, as demonstrated in the chart above.

### Conflicted transactions

86. Where an MP used the ACA to enter into a conflicted transaction, for example by buying or renting a second home from a close relative, a company in which he or she had shares, or a close associate such as an employee, I have regarded the transaction as tainted and the whole payment accordingly invalid. There were only seven of these cases, but they exercised me considerably. In the end I decided that in all of them, as in all other cases where I judged the payments invalid, I should recommend that the whole allowance should be repaid.
87. An alternative view could be that, even where a transaction is tainted by a conflict of interest, it should be accepted as a proper expenditure of public funds if the MP concerned can prove that (a) the transaction was effected at arms' length, typically on the basis of an independent valuation; (b) it was openly disclosed to the Fees Office at the time; (c) the public purse has not suffered; and (d) no third party has improperly benefited.
88. I accept that this is an arguable view, although if it were adopted the burden of proof would be considerable. I have nevertheless come down on the side of recommending the more rigorous view, mainly because the House of Commons, which is the national guardian of public funds, should surely regard itself as held to the highest standards of propriety and example in its Members' own dealings with taxpayers' money. The reputational considerations here seem crucial, in light of the Nolan principles mentioned above.

## INDIVIDUAL CONCLUSIONS AND RECOMMENDATIONS

89. My conclusions and recommendations about each of the 752 MPs and former MPs concerned are set out, in alphabetical order, in the Annex to this report.
90. In every case where an MP made comments or representations on my conclusions at the provisional stage, I have considered them and taken them into account in reaching my final conclusions, in many cases making significant changes.
91. My conclusions are set out in a standard format. Under the name of each MP or former MP, I have recorded either 'no issues' or a statement of the payments in respect of which I conclude that the MP should either make a repayment or should provide supporting evidence.
92. Where an MP is described as having 'no issues', it means that my review has raised no issues about the validity of ACA payments made to him or her during the review period. As mentioned above, this does *not* mean that he or she may not have ACA issues that are or were under investigation by the Parliamentary Commissioner for Standards before 20 July 2009, or by the Police at any stage, or tax issues to be dealt with by HM Customs and Revenue.
93. Where I have concluded that a repayment is due, I have also set out the amount of any repayment that the MP concerned has already made since 1 April 2009 (the end of the review period), together with the resulting balance that the MP is recommended to repay. As far as practicable, the Annex takes account of repayments received up to and including 1 February 2010. Many MPs made repayments between 1 April and 12 October 2009 (when I sent out my provisional findings to most of the MPs concerned) which were not specifically assignable to over-payments which this review has identified. Where appropriate, these repayments have been set-off against repayments recommended by this report. In some cases, MPs had already repaid more than the amount that I subsequently concluded they were required to, leaving a balance of nothing further to be repaid. The recovery of such over-payments will be a matter for the MPs concerned to raise with the Fees Office. In a few cases, MPs have requested that their repayments should not be recorded here, and in these cases I have entered a nil return for repayments.
94. As far as practicable, the Annex also takes account of mortgage interest statements and other supporting evidence, with their implications for possible repayment, received up to and including Friday 29 January 2010.

## THE BROAD RESULT

95. The broad picture that emerges from the review is as follows.
96. Over the five years of the review period, about £55.5m. was paid out to MPs under the ACA. An additional £2.5m. claimed by MPs was rejected by the Fees Office. Of that £55.5m. paid out, about £11m. (20%) was initially called in question by the review. Of that £11m., around £9.5m. (86%) required validating by supporting evidence that should have been provided at the time. Only just under £1.5m. (14%) was provisionally recommended for repayment.
97. At this final stage, a total of just over £1.3m. has been recommended for repayment by 390 MPs. At the date of this report, almost £800,000 has been repaid since 1 April 2009, although this includes some repayments in excess of my recommendations.

<b>ISSUES AND AMOUNTS RECOMMENDED FOR REPAYMENT, BY ACA CATEGORY</b>		
<b>Category</b>	<b>Number of Issues</b>	<b>Recommended Repayment Amount £'000</b>
Hotel Stays	7	£4
Mortgage/Rent	208	£711
Food	12	£12
Utilities	30	£10
Council Tax / Rates	59	£35
Telephone & telecommunications	35	£23
Cleaning	56	£105
Service / Maintenance	52	£81
Repairs / Insurance / Security	24	£73
Other	182	£252
<b>Total</b>	<b>665</b>	<b>£1,305</b>

98. Out of that approximately £1.3m. recommended for repayment, £163,000 (12%) was spent on gardening claims over £1,000 a year, £105,000 (8%) on cleaning claims over £2,000 a year, £152,000 (12%) on duplicate claims and £515,000 (39%) on other over-payments, mainly mortgage interest and rental payments.
99. Out of the 752 MPs and former MPs concerned, 360 (48%) in the end presented no issues for the review, and have been informed accordingly. That left 392 (52%) who have been recommended to make repayments of some amount. It must be emphasised that many MPs requested to make repayments had already done so since April 2009, or did so after receiving my provisional conclusions.
100. The highest single repayment recommended is just under £65,000, and two other MPs are recommended to repay more than £40,000 each. 56 MPs have been recommended to

repay between £40,000 and £5,000. 182 MPs have been recommended to repay between £5,000 and £1,000; and 149 have been recommended to repay between £1,000 and £100.

## **CLOSING CONSIDERATIONS**

### **Appeal**

101. On 1 December 2009 the MEC announced that MPs who felt that they could show special reasons why it would not be fair or equitable to require them to make repayments recommended by my review could make written appeals to the Rt Hon Sir Paul Kennedy.
102. Sir Paul's separate report and decisions will be published with this report. In the 44 cases where he has decided that the repayment I recommend should be remitted in part or in full, notes to that effect have been inserted at the appropriate places in the Annex to this report. Since the amount decided by Sir Paul is taken as the actual figure which the MEC will seek in repayment, the final balance has also been adjusted accordingly. The overall effect of Sir Paul's decisions will reduce the total amount repayable under my recommendations by just under £185,000 (14%) to £1.12m., and will bring the highest single recommended repayment down to £42,458.

### **Cost of review**

103. The total cost of this review from its commencement to the submission of this report has been approximately £1.16m.

### **Envoi**

104. The saga of MPs' expenses and freedom of information has been traumatic and painful. Public confidence has been damaged, and the scars will no doubt take time to heal. But there is a positive side. In responding, our national institutions, including a free press, an independent judiciary and in the end the executive government, political parties and above all the House of Commons itself, are showing that, when things do go wrong, we have together the will and the means to put matters right, heal and reform the systems and the culture, and move forward. It is in that spirit that I submit this report.

*Sir Thomas Legg*  
*1 February 2010*