



House of Commons
Members Estimate Committee

Review of past ACA payments: supplementary report

Second Report of Session 2009–10

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 15 March 2010*

Members Estimate Committee

The Members Estimate Committee has the same Members as the House of Commons Commission:

Rt Hon John Bercow MP, Speaker
Sir Stuart Bell MP
Rt Hon Harriet Harman MP, Leader of the House
Nick Harvey MP
Rt Hon David Maclean MP
Rt Hon Sir George Young MP, Shadow Leader of the House

The Committee is appointed under Standing Order No 152D (*House of Commons Members Estimate Committee*):

152D.—(1) There shall be a committee of this House, called the House of Commons Members Estimate Committee.

(2) The members of the committee shall be those Members who are at any time members of the House of Commons Commission pursuant to section 1 of the House of Commons (Administration) Act 1978; the Speaker shall be chairman of committee; and three shall be the quorum of the committee.

(3) The functions of the committee shall be—

- (a) to codify and keep under review the provisions of the resolutions of this House and the Guide to Members' Allowances known as the Green Book relating to expenditure charged to the Estimate for House of Commons: Members;
- (b) to modify those provisions from time to time as the committee may think necessary or desirable in the interests of clarity, consistency, accountability and effective administration, and conformity with current circumstances;
- (c) to provide advice, when requested by the Speaker, on the application of those provisions in individual cases;
- (d) to carry out the responsibilities conferred on the Speaker by the resolution of the House of 5th July 2001 relating to Members' Allowances, Insurance, &c.;
- (e) to consider appeals against determinations made by the Committee on Members' Allowances under paragraph (1)(d) of Standing Order No. 152G.

(4) Paragraph (3)(b) above does not empower the committee—

- (a) to create a new form of charge on the Estimate for House of Commons: Members; or
- (b) to increase any rate of charge or payment determined by resolution of this House.

(5) The committee shall report to the House from time to time, and in any case not less than once a year, the provisions of the resolutions of this House relating to expenditure charged to the Estimate for House of Commons: Members, as codified and modified pursuant to paragraph (3) of this order.

(6) The committee shall have power to sit notwithstanding any adjournment of the House.

Committee staff

The staff of the Committee are Dorian Gerhold, Rob Cope and Louise Sargent.

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Review of past ACA payments: supplementary report

Decisions on further appeals

1. On 4 February we published Sir Thomas Legg's report on past ACA¹ payments, together with Sir Paul Kennedy's decisions on the appeals.² When we agreed to publish that material, we also decided that Members who had not had an opportunity to appeal before the December deadline should be able to do so. Those affected were mainly Members who had not submitted mortgage or rent information requested by Sir Thomas in time for him to make recommendations, but there were also several other Members who had not received relevant letters in time or at all. The number of these further appeals was 14, including two from former Members who contacted us after Sir Thomas's report was published on 4 February.

2. The appeals have now been considered by Sir Paul Kennedy, and the main purpose of the current report is to publish his decisions on them. They are Appendix 1 of this report.

Correction of errors

3. We are also taking the opportunity to correct several errors in Sir Thomas's report, as follows:

- Alan Keen MP had repaid the full sum recommended. The report should have said:³

Total repayments received since 1 April 2009: £1,321.85

Balance recommended to be repaid: £0.00

(The repayment by Mrs Ann Keen should have been lower by a corresponding amount, though still leaving no balance to be repaid.)

- John Mark Taylor, a former Member, had repaid the full sum recommended. The report should have said:⁴

Total repayments received since 1 April 2009: £2,123.45

Balance recommended to be repaid: £0.00

- For Diana Organ, a former Member, the repayment recommended should have been £14,901.34, rather than £15,964.01.⁵

1 Accommodations Costs Allowance.

2 First Report of the Members Estimate Committee, 2009–10, *Review of past ACA payments*, HC 348.

3 *Ibid*, p 87.

4 *Ibid*, p 168.

5 *Ibid*, p 163.

- For Ann Clwyd MP, the reduction on appeal was £2,650.62 rather than £2,360.62.⁶

We also note that Huw Irranca Davies MP repaid less than the full sum recommended only because he was wrongly informed by the review team of the amount outstanding.

Further repayments

4. As regards current Members, all the remaining sums listed in Sir Thomas Legg's report as balances recommended to be repaid (adjusted if appropriate by the appeal decisions published in this volume) have either been repaid or in 13 cases are covered by an agreement to repay. By 31 July all the agreements to repay should have been fulfilled.

5. As regards former Members, almost all have repaid the sums recommended for repayment by Sir Thomas Legg. The House Service is discussing repayment arrangements with the small number who have not yet repaid the sums recommended.

6 *Ibid*, p 48.

Appendix 1: Further ACA appeals

Wednesday 24 February

To the Rt Hon the Speaker and the Members Estimate Committee of the House of Commons

Following the publication of the Review of past ACA payments, and of my report in relation to repayment appeals, you appointed me to consider appeals from some Members who had not been in a position to appeal earlier—in most cases because they had not received the final decision of the Review in relation to claims for mortgage interest payment. I have now considered those fourteen appeals and replied to each appellant by letter. My replies, which are attached, form the substance of this supplementary report, in which I have adopted the same stance as in relation to the earlier appeals.

As you will see, I recommended that nine appeals be allowed in whole or in part, and thus that the amount of money to be recovered be reduced by £24,351.93. On this occasion, as previously, I am most grateful for the support I have received, but the decisions are mine alone.

Yours sincerely

The Rt Hon Sir Paul Kennedy

Annex: Individual decisions

MR ROGER CASALE

The ACA Review (which had not been able to contact you) found that:

- (i) you were paid £3380.00 twice for quarterly rent in 2004–2005;
- (ii) in June 2004 you were paid £2584.70 for dining-room furniture purchased in June 2003, although payments so far out of time are invalid.

In your e-mail of 22 February 2010 setting out your grounds of appeal you say:-

- (i) the monthly rent was £1690.00, so that the figure £3380.00 x 2 relates to a payment for four months rather than two quarters;
- (ii) that you were not aware of the “out of time” ruling, and believe that appeals have been allowed on the basis of a less rigid approach to fiscal boundaries.

I deal first with rent. The Fees Office records show that at the start of the fiscal year 2004–2005 you claimed as follows:

- (i) claim form invoice no 007768, said by you to relate to “April 2004” claims £5070.00 “quarterly claim”;
- (ii) claim forms for subsequent months (May, June, July) each claim £1690 per month.

Consequently, it looks as though in April 2004 you claimed in advance for three months (April, May and June), but later submitted monthly claims, no doubt having overlooked the fact that you had already been paid.

Turning to the very late furniture claim, it was well known that the Fees Office required claims to be submitted not later than two months after the end of the relevant financial year, and in April 2005 the point was made expressly by the Director of Finance and Administration in his introduction to the Green Book. In the ACA section of the Green Book which was current in June 2003 and June 2004, it was expressly stated that costs cannot be transferred into the next year’s allowance budget, and that is what you did, so I see no justification in your case for the relaxation of fiscal boundaries.

My terms of reference only permit me to interfere if I find special reasons in your individual case showing that it would not be fair and equitable to require repayment either at all or at the level recommended. In your case I find no such reasons and I would therefore dismiss your appeal.

My main report to the Members Estimate Committee has already been published, with my replies to individual appellants forming part of that report. This reply may be published as part of my supplementary report.

MR PAUL CLARK

The ACA Review repeatedly asked you for evidence to support payments in respect of mortgage interest totalling £11,750.35 in 2008–2009. You failed to provide it within the time allowed, so the Review treated the payments as invalid, and recommended repayment of the whole sum.

In your e-mail to me of 3 February 2010, you explain that the Review's request for evidence was over-looked. The Members Estimate Committee having extended time for consideration of appeals, you have now provided the missing evidence, which shows that in the relevant financial year the interest which you paid to your mortgage lender was well in excess of £11,750.35. It follows that, in my view, it would not be fair and equitable to require you to repay any part of that sum, and I would allow your appeal in full.

My main report to the Members Estimate Committee has already been published, with my replies to individual appellants forming part of that report. This reply may be published as part of my supplementary report.

DR LIAM FOX MP

The ACA Review's final position, as set out in the letter to you of 3 February 2010, is that over the five-year period covered by the review, you were overpaid for mortgage interest by £22,476.03. There were also three occasions when you were paid twice for claims. Your appeal relates only to mortgage interest, and I note that pending my decision you have repaid in full.

In 2004 you had a mortgage on your London flat for £120,000.00. The lender was prepared to increase the loan to £300,000.00, based on the value of the property. You did not increase it at once but did so incrementally until it reached £300,000.00 in December 2008. You say that you did not claim mortgage interest on anything over £270,000.00, and that you used the increased loan in two ways:-

- (i) To refurbish the property from time to time. The lease required redecoration every three years, there was work done in the kitchen and the bathroom, some furniture was obtained, and in all this accounted for about £30/35,000.00;
- (ii) You were married and bought a house in the constituency in 2005, which is where the vast majority of the rest of the increased capital went.

In your letter to me of 3 February 2010, you point out that you made no separate claim for the expenses of refurbishing the property, although such claims could have been made under the Rules then in force, but you have not produced to the ACA Review, or to me, any evidence of expenditure incurred which could have been recovered.

The difficulty which you face, as was pointed out by the Review, is that in 2004 the Green Book, at paragraph 13.12.1 specified as not allowable for ACA "interest on any additional mortgages, advances or loans secured on the same property", and, as the Speaker said in his introduction, "Members themselves are responsible for ensuring that their use of allowances is above reproach". It was only in 2006 that the Rules were changed to enable interest on additional mortgages to be recovered if the additional loan was "required for the repair or improvement of that property". I therefore entirely understand why the Review treated much of the mortgage interest which you claimed as being overpaid. It did not, however, restrict you to the interest on £120,000.00. As explained in the Review letter of 26 January 2010, its calculation of recoverable interest was based on the first £150,000.00 of capital. In other words it accepted that £30,000.00 was spent on refurbishment, and that the 2006 Green Book provisions applied.

I do not see how I can help you further. What you claimed was not recoverable under the Rules then in force. I entirely accept that, like many others, you could have made other claims if the Fees Office had rejected your claims for mortgage interest, and that you may well have spent some of what you raised by increasing your mortgage on your constituency home, but the evidence is imprecise, and my terms of reference only allow me to interfere if I find special reasons in your individual case showing that it would not

be fair and equitable to require repayment, either at all or at the level recommended. I can find no such reasons, and I would therefore dismiss your appeal.

My main report to the Members Estimate Committee has already been published, with my replies to individual appellants forming part of that report. This reply may be published as part of my supplementary report.

RT HON GEOFFREY HOON MP

The ACA Review states that you were overpaid by £1013.13 for mortgage interest in 2008–2009. There was also a double payment in respect of another claim with which I am not concerned.

In your letter to me of 2 February 2010, setting out your grounds of appeal, you say that:-

- (i) The Review's conclusions are inconsistent with the settled practice of the House of Commons Fees Office to allow claims based on estimated interest in the course of a financial year;
- (ii) The Review's conclusions are impractical in that the figure for interest actually paid is unlikely to be available for many weeks after the end of the financial year;
- (iii) The Review's findings are perverse in that they have only taken account of the year in which falling interest rates produced an over-claim. There were years in which rising interest rates involved an under-claim.

You go on to explain that your mortgage lender (like many others) works on the basis of a calendar year, and the Fees Office worked on the basis of a normal financial year, so some monthly claims had to be made before the precise information as to what interest had been paid to the lender was available. The Fees Office in practice accepted claims based on estimates.

Nevertheless, there was no reason why, when accurate information became available, you did not each year do as some other Members did, and adjust the position with the Fees Office. In principle ACA permitted recovery of expenditure incurred, no more. That said, I accept that, now that all of the relevant information is available, it can be seen that in four of the five years covered by the Review, you under-claimed for mortgage interest, and in fact the total of your under-claims was £1746.73, which exceeded the over-claim in the final year of £1013.13. That conclusion is more favourable to you than the figures set out in your letter to me because you worked on ACA claims, not on sums actually paid.

I therefore conclude that it would not be fair and equitable in your case to require any repayment, and I would allow your appeal in full.

My main report to the Members Estimate Committee has already been published, with my replies to individual appellants forming part of that report. This reply may be published as part of my supplementary report.

MR JOHN LYONS

The ACA Review stated that no reply has been received from you to a number of letters sent to the address held by the House authorities. The letters sought evidence to support payments of mortgage interest totalling £18,870.80 for the fiscal year 2004–2005, plus the month of April 2005. In the absence of evidence the Review regarded the payments as invalid, and recommended repayment of £18,870.80.

It now transpires that the letters were sent to an old address and were never delivered to you, but, having heard of the Review's conclusions, you have provided me with material from your mortgage lender which enables me to calculate what interest you were entitled to recover (excluding ineligible repayments of capital). The material shows that for the period April to December 2004 you paid to your mortgage lender £11,781.75, but the eligible interest was only £5939.55. For the period from 1 January to 11 April 2005 (the date of Dissolution) you paid to the mortgage lender a total of £5324.12, but the eligible interest was only £1926.75. So the total eligible interest for the period from 5 April 2004 to 11 April 2005 was $£5939.55 + £1926.75 = £7866.30$. That sum is substantially less than the sum of £18,870.80 which you claimed, and were paid as ACA (possibly by basing yourself on gross payments to your mortgage lender).

I therefore conclude that you should be recommended to repay £18,870.80 less £7866.30 = £11,004.50. To a limited extent therefore I would allow your appeal.

My main report to the Members Estimate Committee has already been published, with my replies to individual appellants forming part of that report. This reply may be published as part of my supplementary report.

RT HON DENIS MACSHANE MP

The ACA Review found that:-

- 1) in three of the years covered by the Review you were paid more than £2000.00 pa for cleaning costs, the total excess being £1354.342;
- 2) in September and October 2008 you were paid £153.39 for gas which appears to have been supplied to your principal rather than your second home;
- 3) you should supply mortgage interest statements to support ACA payments in respect of mortgage interest totalling £6001.34 for the period April 2004 to January 2006.

In your original appeal to me you challenged the decision in relation to cleaning costs, and for reasons which I gave in my decision letter of 28 January 2010 that appeal did not succeed. I have no more to add in relation to cleaning costs.

You have asked to see the gas bill in question, and two bills were sent to you on 22 February 2010. Having seen those bills you say, in your letter to the Review dated 24 February, that the bills related to your constituency office, and you accept that they should not have been claimed as ACA. I accept that if claimed as IEP the amounts claimed would have been recoverable, so I consider that it would not be fair and equitable to ask you to repay.

The position in relation to mortgage interest is that you have now provided the necessary evidence (with your letter to the Review dated 9 February 2010). The statements of the mortgage lenders show that over the five-year period covered by the Review you under-claimed by £201.79, having over-claimed in three years and under-claimed in two years.

I therefore conclude that you should be required to repay only £1354.34 (which you have already repaid).

My main report to the Members Estimate Committee has already been published, with my replies to individual appellants forming part of that report. This reply may be published as part of my supplementary report.

MR SHAHID MALIK MP

The ACA Review says that:-

- (i) in February 2006 you were paid £1050.00 for a television, which exceeded the guideline price of £825.00 by £225.00;
- (ii) you were overpaid council tax and summons costs as follows:

2005–2006	£284.47
2006–2007	£586.09
Summons	£65.00
Total	£935.56
- (iii) in September 2007 you were paid £730.00 for an armchair, exceeding the guideline price of £550.00 by £180.00.

The total repayment recommended was therefore £1340.56. The Review recorded repayments totalling £1304.43, so recommended repayment of the balance of £36.14.

In your letter to me of 3 February 2010 you set out some background, and then turned to the armchair, the price of which you seek to justify by reference to what you believe to be the guide price for a suite. I do not find that persuasive. I entirely agree that it is frustrating to have your claim for an item of furniture accepted, only to be told later that it exceeded a guideline price of which you were unaware, but anyone required to decide what it would have been reasonable for the public to pay to provide you with furniture has to draw a line somewhere, and the Review having drawn it at £550.00 I can only interfere if satisfied that in your individual case there are special reasons showing that it would not be fair and equitable to require repayment. I can find no such reasons. The approach adopted in your case was applied to all other Members who made claims for furniture or household equipment.

The same line of reasoning seems to me to be fatal to your appeal in relation to the television and DVD Player. What matters is not what the item is or was worth, but what the reviewer considers that it would be reasonable for the public to pay towards an item of that kind. I understand your irritation if, as you say, you sought guidance from the Fees Office and were told there was no limit, then when you claimed were told, first by the Fees Office that only £1050.00 would be allowed, and later by the Review that only £855.00 would be allowed, but for the reasons set out above in relation to the armchair I cannot intervene. I have no remit to re-draw the line.

Your grounds of appeal in relation to council tax raise different issues. You accept that you should never have claimed the summons cost of £65.00, and point out that the sum has been repaid. You dispute over-claiming for council tax in 2005–2006, but do not disagree with the Review’s figure of £955.56 (sic) for the two years. You say that it all

relates to 2006–2007 and was “part of a planned over-claim on council tax designed to offset a broadly known and understood under-claim on my mortgage interest”. You say that at the end of the fiscal year you wrote to the Fees Office to explain what you had done, and I have seen what you say is a copy of that letter. Nevertheless, as it seems to me, the position is quite simple. In the years identified by the Review you claimed for more council tax than you had paid, as the documents show. Nothing in the Rules entitled you to inflate your claim for council tax to make up for any shortfall in your claim for mortgage interest.

Accordingly, I find in your case no special reasons showing that it would not be fair and equitable to require repayment as recommended by the Review and I would dismiss your appeal.

My main report to the Members Estimate Committee has already been published, with my replies to individual appellants forming part of that report. This reply may be published as part of my supplementary report.

MR GEORGE MUDIE MP

The ACA Review says that you were overpaid by £182.51 for mortgage interest in 2007–2008, and recommends repayment of that sum

In your grounds of appeal to me (which seem to have initially gone astray because of a defective address) you point out that in the three preceding financial years you were underpaid in respect of mortgage interest by a total of £981.01, and that in the final year covered by the Review you did not claim anything for mortgage interest. The figure of £981.01 is slightly higher than the figure in your letter to the Review of 7 December 2009, and is based on the information which you provided from your mortgage lender.

It follows that over the five-year period covered by the Review you under-claimed by £798.50, and in those circumstances it seems to me that there are special circumstances in your case showing that it would not be fair and equitable to require any repayment. I would therefore allow your appeal.

My main report to the Members Estimate Committee has already been published, with my replies to individual appellants forming part of that report. This reply may be published as part of my supplementary report.

MR CHRIS POND

The ACA Review, as published, states that you were overpaid in respect of mortgage interest by £1592.30 in the financial year 2004–2005, and £58.56 in April 2005, a total of £1650.86. You had already repaid more than that amount, so there was no recommendation for repayment.

In your letter to me of 2 February 2010 you draw attention to the Review's earlier assessments. I have no remit to consider those, but obviously during any process of the kind undertaken by the Review figures are refined. As to the final figure you have already been sent details showing how that figure was reached. You say that you want to understand what rules the Review believes you have breached. I am sure that, on reflection, you accept that it was a breach of the Rules to claim as ACA more by way of mortgage interest than you had paid to your mortgage lender, and it is irrelevant what may have been the maximum recoverable as ACA in that fiscal year.

I hope that addresses your concerns, but as my terms of reference only enable me to consider cases where there is a recommendation for repayment, and as there is none in your case, I would dismiss your appeal.

My main report to the Members Estimate Committee has already been published, with my replies to individual appellants forming part of that report. This reply may be published as part of my supplementary report.

ALISON SEABECK MP

The final position taken by the ACA Review was as follows:-

- (i) in November 2005 you were paid £795.00 twice for rent;
- (ii) in October 2007 you were overpaid for mortgage interest by £1167.00, and
- (iii) in 2008–2009 you were overpaid for mortgage interest by £444.65.

You were therefore recommended to repay £2406.65, and had repaid £1612.65, so you were recommended to repay the balance of £794.00. In your original appeal to me you dealt with items (i) and (ii). You accepted both, but said that you had repaid item (ii), and had redressed the balance in respect of item (i) by not claiming for rent in May or June 2008. In my decision letter of 28 January 2010 I accepted that you did not claim for rent in May or June 2008, but regarded such a claim as unacceptable, because you had begun to claim mortgage interest on a new property. Item (iii) was not dealt with in your original appeal because the Review only drew it to your attention in a letter dated 26 January 2010.

In your letters to me of 1 and 8 February 2010 you raise three issues:-

- (i) the over-payment in respect of interest of £444.65 in the financial year 2008–2009. You explain that at the end of the financial year you submitted two claims, both dated 31 March 2009. One should have been given a later date. Both were paid on 2 April 2009. You have now repaid £444.65, to balance the account for that financial year. There is therefore no issue for me to consider in relation to that sum;
- (ii) overlapping claims for rent and mortgage interest. This is not really a new issue. It arises out of my decision letter, but as the point does not seem to have been made to you expressly in earlier correspondence I am prepared to consider what you say. You assert that the Fees Office has always accepted that a Member can continue to recover as ACA monthly rent at the end of a tenancy, and at the same time claim mortgage interest on a property which he or she has purchased. If so, it seems to me that the practice was plainly wrong. The public purse never undertook to contribute to two second homes, and it makes no difference that the property which the Member has chosen to purchase needs to have work done to it before it can be inhabited. Paragraph 3.5.2 of the Green Book (July 2006 edition) says that:
“You must not claim ACA for more than one location at any time unless the DFA has specifically approved other arrangements in writing”.

I have no knowledge of any such approval. In this context you refer to the Winding-up Allowance. That is not relevant. It is “designed to meet the cost of completing the outstanding parliamentary duties of a person who ceases to be a Member of Parliament” (Green Book July 2009, paragraph 2.8.1);

- (iii) finally, you point out that in the fiscal year 2005–2006 your ACA claim was capped because it reached the annual ceiling, and in March 2006 £1754.00 was not paid. That was the year in which you claimed and were paid twice for rent. You point out, rightly, that if you had not made the mistaken claim for £795.00 in November 2005 you would have received another £795.00 towards the claim submitted and checked in March 2006 before you reached the cap. This is a new point, not previously raised by you.

I therefore conclude, that because of the imposition of the cap in the relevant financial year there are now shown to exist in your case special reasons showing that it would not be fair and equitable to require repayment of the outstanding amount of £794.00, and I would allow this appeal.

My main report to the Members Estimate Committee has already been published, with my replies to individual appellants forming part of that report. This reply may be published as part of my supplementary report.

ALAN SIMPSON MP

In its final report the ACA Review said that:-

- 1) in 2004–2005 you were paid £2527.50 for cleaning costs which exceeded the allowable maximum by £527.50;
- 2) Between April and December 2008 you were overpaid in respect of mortgage interest by £1503.67;
- 3) in the absence of evidence to support mortgage interest payments totalling £2265.00 for the period January–March 2009 those payments were treated as invalid.

Attention was also drawn to an overpayment in respect of water bills, which you had repaid, but you were recommended to repay the total of items 1), 2) and 3) namely £4296.17.

In your letter to the Review of 28 January 2010, you complain that the Review's decision in relation to cleaning costs is retrospective and arbitrary, but I am sure that you would accept that anyone required to consider the extent to which such costs should be borne by public funds would have to draw a line somewhere. The Review having drawn it at £2000.00 per annum I cannot intervene because my terms of reference only allow me to do so where I find special reasons in the individual case showing that it would not be fair and equitable to require repayment either at all, or at the level recommended. The approach adopted in your case is the same as in relation to all other Members, so I can find no special reasons.

Turning to mortgage interest, I entirely accept that as the lenders usually produced statements of interest related to calendar years, and the Fees Office wanted information related to fiscal years, many Members found it difficult to provide accurate information when making claims. Estimates, based on mortgage lenders' figures for the last calendar year were often used and accepted. In your case the position was a little more complicated, because in 2007 you increased the mortgage on your second home to pay for improvements to your constituency property. You could not under the Rules recover interest on the additional loan, so you agreed with the Fees Office only to claim thereafter 60% of the mortgage interest which you actually paid.

Now that all of the relevant information has been made available by the mortgage lenders it is clear that in 2008–2009 you paid mortgage interest totalling £10,171.69, 60% of which is £6103.01. You claimed and received as ACA for mortgage interest £9060.10, so you were overpaid by £2957.09 (£9060.10 minus £6103.01). That is less than was asserted by the Review when it did not have all of the relevant information, and leads to the conclusion that you should be recommended to repay not £4296.17 but £527.50 (cleaning) + £2957.09 (mortgage interest) = £3484.59.

My main report to the Members Estimate Committee has already been published, with my replies to individual appellants forming part of that report. This reply may be published as part of my supplementary report.

MR ANDREW TYRIE MP

The ACA Review found that you were overpaid by £1638.99 for mortgage interest in 2008–2009 and recommended repayment of that sum, which you have in fact repaid pending my decision on this appeal.

In your letter to me of 3 February 2010 you deal at some length with the methodology used by the Review team which you seek to contrast with that used by the Fees office. In my view that is not a fruitful line to pursue. The Review's methodology is clearly set out in its e-mail to you of 3 February 2010 and the approach adopted by the Fees office is set out in the mail to you from the Director of Operations of the same date.

The problem is that many mortgage lenders operate on the basis of a calendar year, and with an interest-only mortgage like yours they fix the amount to be repaid each month at the beginning of the year. In fact interest rates fluctuate, so at the end of the year if the borrower has paid too much that is treated as a reduction of capital and vice versa. The Fees Office works on a fiscal year, and the Review was required to look at five such years ending on 5 April 2009. In order to convert the information from your mortgage lender into information relevant to a fiscal year the Review used a simple and obvious formula—it assumed that 75% of the interest paid by you in 2008 (as calculated retrospectively by your mortgage lender) was attributable to the fiscal year 2008–2009, together with 25% of the interest paid by you in 2009. The application of that formula disclosed the over-payment of £1638.99. There can be no suggestion of impropriety, because when you made your claim you were simply making use of the information then available to you, and the explanation for the over-claim is the fall in interest rates in that fiscal year.

What seems to me to be a much more telling point in your favour is that in each of the preceding four fiscal years covered by the Review the methodology used by the Review revealed that you under-claimed, by a total of £2310.28. That means that over the 5 year period covered by the Review you underclaimed by £2310.28 minus £1638.99 = £671.29. In those circumstances I conclude that it would not be fair and equitable to require any re-payment, and I would allow your appeal in full.

By setting the date for the end of the period covered by the Review Parliament made it necessary to balance the books on that date. Had it not done so your mortgage interest account would have been balanced by the Fees Office in the normal way at some future date, possibly, as indicated by the Director of Operations, when you closed your mortgage.

My main report to the Members Estimate Committee has already been published, with my replies to individual appellants forming part of that report. This reply may be published as part of my supplementary report.

MRS BETTY WILLIAMS MP

The ACA Review says that you were overpaid in respect of mortgage interest by various amounts in each of the five years covered by the Review, totally £750.25.

In your letter to me of 3 February 2010 you make it clear that what you are really seeking is a clarification of the figures, which may enable you to be satisfied the Review's figures are correct. In your letter to the Review dated 1 February 2010, you acknowledged a net over-claim of £487.19 but did not accept the balance of £263.06.

I know that you have been sent a schedule prepared by the Review which sets out how it arrived at its conclusion. I enclose, in case it may assist, a further schedule, which sets out the figures slightly differently. The conclusions are the same. But it highlights three matters that need to be taken into consideration and which you may have overlooked:

- 1) the interest paid, and recoverable as ACA, is not always precisely the same as what your mortgage lender takes from your account;
- 2) allowance had to be made for the period of Dissolution, in April and May 2005; and
- 3) there was a double claim in April 2006.

When these matters are taken into consideration it seems to me to be clear that the Review figures are right, but, as the schedules show, it is virtually impossible to make monthly claims which turn out to be precisely right, and in your case there is no suggestion of impropriety.

For the reasons set out above I find no special reasons in your case showing that it would not be fair and equitable to require the recommended repayment, and I would therefore dismiss your appeal.

My main report to the Members Estimate Committee has already been published, with my replies to individual appellants forming part of that report. This reply may be published as part of my supplementary report.

DEREK WYATT MP

The ACA Review identified a number of over-payments and double payments totalling £3,611.50.

In your original appeal to me you implicitly accepted that you had been overpaid as alleged, but sought to set off against the sum of £2,893.49 (the sum recommended for repayment by the Review in December 2009) other claims which you made during the five years covered by the Review which were not allowed, because your ACA claims reached the annual limit. Those other claims were said to total £3,787.20 (a figure which you said you obtained from the Fees Office) but I did not consider that I had sufficient proof of them to enable me to treat them as an available credit.

In your e-mail to me of 3 February 2010 you seem to me to be simply embellishing the same argument. You explain how you came to over-claim £1,776.88 in respect of council tax (by repeatedly claiming for 12 months instead of 10), and how you were told that your total claims disallowed because they exceeded annual limits amounted to £3,787.20. You then set out a version of your attempt to repay the over-claimed council tax which, as you know, is not accepted by the Fees Office (see the letter to you of 30 December 2009 which you copied to me). I cannot resolve that issue, and for present purposes do not need to do so.

You have now sent to me copies of four letters which you have received from the Fees Office. Those dated 27 January 2005, 10 March 2006 and 6 March 2009 show that in the fiscal years 2004/2005, 2005/2006 and 2008/2009 you reached your ACA annual limit before the end of the year. The letter of 19 March 2008 (copied twice) shows that you reached the annual limit for 2007/2008 in February 2008 and were allowed to set off against claims for £270.28 which could not be paid an overpayment of £129.72 in respect of council tax in that fiscal year which would normally need to be repaid. The writer had also, at your request, checked your council tax claims for 2006/2007 and found that you had been overpaid by £99.00, but did not seek repayment because (it seems) in March 2007 you had again reached the annual limit and not been paid all that you claimed. I have no difficulty in understanding what was done in March 2008, and I accept that in the light of what was done you should not now be treated as having been over-paid in respect of council tax in either of those two fiscal years. That has a modest effect upon the calculations made by the Review, but the recommendation for repayment still exceeds £3,000.00. In your e-mail to me you say that you paid back your council tax in July 2009. It is not clear to which fiscal year or years that assertion relates. I assume it relates to the over-payment of £129.23 in the year 2008/2009 which was identified by the Review, but I have found no evidence of the repayment.

Turning to your general point, you suggest, once again, that you should be allowed to set off the sum recommended to be repaid against the total claims made by you in the five years covered by the Review which were not paid because you had in each year reached your ACA annual limit before the end of the year. You have produced a table

showing that you claimed a total of £5,489.77. The figure is noticeably different from the figure of £3,787.20, which you say came from the Fees Office, but maybe the Fees Office calculation related to a different period. My difficulty now is the same as it was when I wrote to you on 28 January 2010. I cannot regard your unpaid claims as being sufficiently established to constitute a credit on which you can now draw. As I said in the penultimate paragraph of my earlier letter:

In some cases where, for example, a claim for monthly mortgage interest has been proved and accepted by the Fees Office but disallowed because of the existence of the annual ACA cap, I have considered it fair and equitable to treat that unpaid mortgage interest claim as a credit which can offset an overpayment in that fiscal year, but in your case I do not have sufficient proof of your claimed £3,787.20 (or £5,489.77) credit to enable me to operate in that way.

Save in relation to council tax I am therefore unable to find special reasons showing that it would not be fair and equitable to require repayment and I would therefore dismiss this second appeal.

The result is a recommendation for repayment of £3,489.82, being:

- 1) items unrelated to council tax (not questioned by you) £2,321.20, and
- 2) council tax (adjusted) £1,168.62.

My main report to the Members Estimate Committee has already been published, with my replies to individual appellants forming part of that report. This reply may be published as part of my supplementary report.

Formal Minutes

Monday 15 March 2010

Members present:

Mr Speaker, in the Chair

Sir Stuart Bell
Ms Harriet Harman
Nick Harvey

David Maclean
Sir George Young

Draft Report (Review of past ACA payments: supplementary report), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 5 read and agreed to.

A paper was appended to the Report as Appendix 1.

Resolved, That the Report be the Second Report of the Committee to the House.

[Adjourned till Monday 29 March at 4.30 pm]