

## ACA REVIEW

### THE REVIEW'S APPROACH TO THE ACA RULES

#### Note by Sir Thomas Legg

This note gives background information about the Review's approach to the interpretation of the rules governing the Additional Costs Allowance (the ACA).

#### Executive summary

The main points can be summarised as follows:-

- 1) To judge the validity of payments, the Review has to interpret and determine the rules and standards governing the ACA during the review period; this is not a straightforward task;
- 2) The ACA was governed by the Green Book rules, supplemented by the practice of the Fees Office; but this was also subject to fundamental principles of propriety derived from the Green Book itself and from the Code of Conduct;
- 3) ACA payments therefore had to be both within the defined scope and purpose of the allowance, and also compliant with the fundamental principles (together, the 'overriding principles');
- 4) It followed, in particular, that the ACA was to be regarded, not as a supplementary source of income, but as a support for specific and proportionate expenditure on accommodation needed for the performance of Parliamentary duties;
- 5) The validity or otherwise of ACA payments under the rules was not affected by the views, words and actions of the Fees Office at the time;
- 6) Recommendations for repayment of invalid ACA payments carry no implication about the conduct or motives of the MPs concerned;

- 7) Mortgage interest statements and similar formal records were required by the rules and are essential to justify ACA payments;
- 8) MPs who did not provide such evidence at the time will therefore be requested to do so now, in default of which repayment of the whole allowance involved will be recommended;
- 9) In other comparatively minor cases of insufficient evidence, certain *de minimis* exceptions will be allowed, for reasons of proportionality;
- 10) Where ACA payments breached specific Green Book rules, they will be judged invalid;
- 11) Here too, certain *de minimis* exceptions will be allowed;
- 12) Where ACA payments breached the overriding principles, they will also be judged invalid;
- 13) One frequent example of this was allowing disproportionate claims for secondary items; in such cases, specific limits must be taken to have been in place;
- 14) On this basis, the costs of cleaning and garden maintenance will be regarded as having been acceptable up to limits of £2,000 and £1,000 a year respectively, but not more;
- 15) Other cases affected by the overriding principles include conflicted transactions and multiple household purchases.

### **The need to determine what the rules were**

1. The Review's core task is to identify payments of the ACA made between 2004 and 2009 which should not have been made, and to recommend any repayments which MPs should make. In doing this, the Review is required to apply the rules and standards governing the ACA at the time. For this purpose, the Review therefore has to interpret and determine what the rules and standards in force at the time were.

2. This is by no means a straightforward task. As other authorities, including the Information Tribunal, the Court of Appeal and the Comptroller and Auditor General have publicly observed, the whole ACA system was flawed in various respects. One of these was that there were gaps and tensions between the elements of the rules governing the allowance. These gaps and tensions are difficult to reconcile, and this in turn complicates the task of interpreting and applying the rules.

### Elements of the rules

3. The rules and standards in force during the review period ('the rules') consisted of three elements: (a) the '**Green Book rules**', based on Resolutions of the House; (b) the **practice of the Fees Office** (Department of Resources) 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.
4. **The Green Book** set out a framework of more or less specific, though not exhaustive, rules under which the ACA was to be administered. This framework was based on the principle that MPs were primarily responsible for identifying, claiming and certifying their own expenditure on allowances, and for the propriety of that expenditure. At that time, there was no audit check on the amount or propriety of individual items of expenditure on the ACA or other Parliamentary allowances.
5. The relevant section of the Green Book began by defining 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).
6. **The practice of the Fees Office** supplemented the Green Book rules, in line with rulings and guidance from the House authorities. Thus, for example, 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 was set at £25); and it applied, although MPs were never officially informed of it, the so-called 'John Lewis list' as a benchmark for certain household purchases.

7. **The fundamental principles** required MPs personally to ensure that their use of the ACA was: (a) necessary for the performance of their Parliamentary duties; (b) not extravagant or luxurious; (c) in accordance with the Nolan principles of selflessness, accountability, honesty and leadership; (d) strictly in accordance with the rules governing the allowance; (e) above reproach; (f) took account of the need to obtain value for money; and (g) avoided any appearance of benefit, or a subsidy from public funds, or diversion of public money for the benefit of a political organisation. These principles together amount to a general requirement of propriety.
8. In short, all ACA payments had to be both within the defined scope and purpose of the allowance, and also compliant with the requirement of propriety as embodied in the fundamental principles. These requirements may together be called the ‘overriding principles’ of the ACA.
9. It followed, in particular, from the overriding principles that the ACA was to be regarded, not as a supplementary source of income, but as a support for specific and proportionate expenditure on accommodation needed for the performance of Parliamentary duties.

### **Application of the rules**

10. The Review has identified over 147,000 individual ACA payments made by the Fees Office to MPs during the review period. Most of these payments appear to have been valid. However, a number of them either (a) cannot yet be judged valid, because they were not supported by sufficient evidence, as required by the Green Book; or (b) must be judged invalid because they breached specific Green Book rules; or (c) must be judged invalid because they significantly breached the essential requirement of propriety, as ordained by the overriding principles.
11. The Review’s judgments that ACA payments were invalid cannot be affected by views, words or actions of the Fees Office at the time to the effect that they regarded them as proper and acceptable.
12. Equally, a recommendation by the Review that an MP should repay all or part of an ACA payment carries no implication or innuendo about the conduct or motives of the MP concerned.

### **Insufficient evidence**

13. 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.
14. MPs who failed to produce these records at the time will therefore be requested to do so now. If on reasonable notice an MP is unwilling or unable to produce such statements, the payments concerned should in default be determined to be invalid and the MP will be recommended to repay the whole of the allowance granted for the mortgage etc.
15. On the other hand, the practice of the Fees Office before 2008-09 of not requiring receipts for a variety of expenditures less than £250 a month (£400 in the case of food) has been accepted for the purposes of the Review. However, where subsequent claims or other evidence suggest that such earlier payments may have been materially incorrect, the Review will request evidence to substantiate the earlier payments.
16. In addition, on a *de minimis* basis, the Review will not require further supporting evidence for single payments 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**

17. Where a payment made by the Fees Office was incorrect on the face of it, by reference to specific rules in the Green Book, then the payment will be determined to have been invalid and the MP who received it will be recommended to repay the amount involved.

18. However, here too and on the same basis, certain *de minimis* exceptions will also be 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 that took place during the review period, in 2005.

### **Breach of overriding principles**

19. Where a decision or practice of the Fees Office was significantly contrary to the overriding principles, it must be judged to have been in breach of the rules.

20. One frequent example was the practice of allowing MPs to make disproportionate claims. For the central purpose of the ACA, namely putting a roof over MPs' heads to enable them to perform their Parliamentary duties, the upper limit of the allowance may normally be taken as the relevant and sufficient control. The Review will therefore not question the size and scale of second homes financed by the ACA, or the necessity of providing them at all. However, for secondary purposes, though legitimate in themselves, some limits must be regarded as having been in place to prevent disproportionate and unnecessary expenditure from the public purse.

21. In some areas, such as household furniture and equipment (see paragraph 6 above), the Fees Office did in fact impose such limits. In others they did not, and in these areas the Review has to establish the limits which must be taken, in compliance with the overriding principles, to have been in place at the time for certain recurring heads of subordinate expenditure. Two cases in point are cleaning and garden maintenance.

22. On this basis, the cost of cleaning in the second home will be regarded as having been acceptable up to £2,000 a year, but beyond that will normally be held to have been invalid; and payments above that limit will be recommended to be repaid.

23. Similarly, costs up to £1,000 a year but not more will be regarded as having been acceptable for garden maintenance, and payments above that limit will also be recommended to be repaid.

24. Among other cases also affected by the overriding operation of the fundamental principles are those involving conflicted transactions and multiple purchases.
25. 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, the transaction will be regarded as tainted, and the whole payment accordingly invalid. This will be so even if the MP can show that it was effected at arms-length or that the public purse has not suffered.
26. Further, except where there is an obvious and sensible justification on the face of the record, MPs will be recommended to repay the cost of over-frequent replacements of household equipment.

*Sir Thomas Legg*

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