



Reassessment of past ACA claims

Standard Note: SN/PC/05123

Last updated: 9 February 2010

Author: Richard Kelly

Section: Parliament and Constitution Centre

This note provides a brief overview of the establishment and role of the group charged with reassessing past claims made under the Additional Costs Allowance.

The review is being led by Sir Thomas Legg KCB QC, and its terms of reference are:

'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.'

At its meeting on 20 July 2009, the Members Estimate Committee extended the review to cover 2008/09.

Sir Thomas Legg wrote to Members and former Members with his preliminary conclusions on 12 October 2009. Final conclusions were issued in December and Members were given until 23 December 2009 to submit appeals. Following an appeal process conducted by Sir Paul Kennedy, the Members Estimate Committee published a short report with Sir Thomas Legg's report and Sir Paul Kennedy's responses to appeals on 4 February 2010.

A small number of appeals still have to be considered. But plans have been made to ensure that Members pay back any overpayments they have received.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

Contents

- 1 Background 3**
 - 1.1 Terms of reference 3
 - 1.2 Changes to the review 4
- 2 Members Estimate Committee decisions 4**
 - 2.1 Formal announcements 5
- 3 Progress on the reassessment 6**
 - 3.1 Preliminary conclusions 8
 - 3.2 Sir Thomas Legg’s final conclusions 11
 - 3.3 Appeals against Sir Thomas Legg’s findings 11
 - 3.4 Continuing the Legg Review 13
 - 3.5 Publication of Sir Thomas Legg’s Report 14
 - 3.6 Next steps 16
 - Late appeals 16
 - Recovering overpayments 16
- 4 Cost of the review 16**

1 Background

On 18 May 2009, the Speaker announced that he intended to convene a meeting of party leaders, the Members Estimate Committee and the Chairman of the Committee on Members' Allowances to discuss the issue of Members' expenses following publication of information in the *Daily Telegraph*. He announced that:

... I am calling the Prime Minister and party leaders, including those of the minority parties, to meet me and the other members of the House of Commons Commission. Also present will be the right hon. Member for Islwyn (Mr. Touhig).

Leaders of all parties have made announcements on what should be done. Some of their proposals are very similar to those put to the House on 3 July last year by the Members Estimate Committee—which I chair—copies of which are lodged in the Vote Office. I want discussion to centre on the additional costs allowance and all those matters that have caused the greatest controversy and most anger with the public, and I include in that the early publication of the additional costs allowance, office costs and travel material.¹

The following day, the Speaker announced the outcome of the meeting to the House. His statement referred to Government proposals for a parliamentary standards authority, to immediate changes to the rules on Personal Additional Accommodation Expenditure (PAAE), and to plans to review all past claims made for Additional Costs Allowance (the predecessor of PAAE):

All past claims under the former additional costs allowance over the past four years will be examined. This will be carried out by a team with external management; the external manager will be appointed after consultation with the Comptroller and Auditor General. All necessary resources will be made available. The team will look at claims in relation to the rules which existed at that time, and will take account of any issues which arise from that examination which cause them to question the original judgment.²

1.1 Terms of reference

The Members Estimate Committee (MEC) announced the terms of reference of the review on 1 July 2009, in a press notice:

The Members Estimate Committee (MEC) has set up an independent review of the operation of the Additional Costs Allowance - the "second home allowance" - during the four years 2004/05 to 2007/08.

The review will be led by Sir Thomas Legg KCB QC, and will examine ACA claims and payments in relation to the rules and standards in force at the time.

Sir Thomas will be supported by a joint team including House staff and others, with a small group from PricewaterhouseCoopers providing professional expertise. He will also receive advice from the National Audit Office and the House's own Head of Internal Audit.

The full terms of reference of his review are:

¹ HC Deb 18 May 2009 c1205

² HC Deb 19 May 2009 c1422

'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.'

Before reaching his decisions, Sir Thomas will send every Member and ex-Member concerned draft conclusions about his or her claims and payments, giving three weeks to respond with comments or other representations.

Sir Thomas is a lawyer and former civil servant, and served as Permanent Secretary of the Lord Chancellor's Department (now the Ministry of Justice). Until recently he was an external member of the House's Audit Committees.³

1.2 Changes to the review

At its meeting on 20 July 2009, the MEC agreed two changes to the review. First it was extended to cover the financial year 2008/09 and, secondly, the MEC agreed to exclude payments under investigation by either the Parliamentary Commissioner for Standards or the police from the review. The minutes of the meeting recorded that:

The Committee agreed that the review by Sir Thomas Legg should be extended to cover 2008/09. It also agreed that the review should not cover payments which were under investigation by the Parliamentary Commissioner for Standards or the police.⁴

2 Members Estimate Committee decisions

Following the Speaker's statement on 19 May, the MEC met on 20 May to discuss the adoption and implementation of the measures announced in the statement. The minutes of its meeting on 20 May recorded:

1. ADOPTION AND IMPLEMENTATION OF MEASURES ANNOUNCED IN MR SPEAKER'S STATEMENT OF 19 MAY

[...]

The Committee directed the Accounting Officer to instruct the Department of Resources to make arrangements for a re-examination of claims under the former Additional Costs Allowance over the period 2004/05 to 2008/09, and to make reasonable resources available. This task was to be carried out by a team headed by an external manager appointed after consultation with the Comptroller and Auditor General. The team was to look at claims in relation to the rules which existed at the

³ Members Estimate Committee Press Notice, *Review of Second Home Claims Begins*, 1 July 2009, Press Notice No 2, 2008-09

⁴ House of Commons Commission, *Formal Minutes 20 July 2009*, 20 July 2009, Item 1

time, and to take account of any issues arising from that examination which caused them to question the original judgment.⁵

Andrew Walker, the Director General of Resources, informed Members of this decision in a letter of 21 May 2009.

The MEC met again on 21 May and “deliberated” on measures announced in the Speaker’s statement of 19 May 2009.⁶

At its meeting on 8 June 2009, the House of Commons Commission, which has the same membership as the MEC, convened as the MEC to consider further the reassessment of past ACA claims. Its minutes recorded

3. REASSESSMENT OF PAST ACA CLAIMS (MEC)

The Committee agreed:

- that the reassessment would assess claims against the rules as they existed at the time, and would cover the four years from 2004/05 to 2007/08;
- that expenses of Members who had died would not be covered;
- that its preference was for the reassessment to be managed by Sir Thomas Legg with PricewaterhouseCoopers providing part of the team, and that the Comptroller and Auditor General should be consulted about this; and
- a timescale for the reassessment, including three weeks for Members to comment.⁷

The MEC made further decisions on the reassessment of past ACA at a meeting of the Commission the following day, 9 June 2009:

1. REASSESSMENT OF PAST ACA CLAIMS (MEC)

The Committee agreed to accelerate the reassessment process by several weeks by using more staff for the initial review, but decided not to reduce the three weeks allowed for Members to comment on the findings and not to announce at this stage a date for publication of the findings.⁸

2.1 Formal announcements

A formal announcement that Sir Thomas Legg had been engaged to undertake the reassessment of past ACA claims was made on 19 June 2009. However, his terms of reference had not been agreed at that point:

Roger Berry: To ask the hon. Member for North Devon, representing the House of Commons Commission what terms of reference have been set for the audit of previously submitted and paid expenses claims by hon. Members; what instructions have been given to those performing the audit; when he expects the audit to be completed; in what form the results of the audit will be published; and whether any external accountancy expertise has been recruited to assist in the audit.

⁵ Members Estimate Committee, [Formal Minutes 20 May 2009](#), 20 May 2009, Item 1

⁶ Members Estimate Committee, [Formal Minutes 21 May 2009](#), 21 May 2009, item 1

⁷ House of Commons Commission, [Formal Minutes 080609](#), 8 June 2009, Item 3

⁸ House of Commons Commission, [Formal Minutes 090609](#), 9 June 2009, Item 1

Nick Harvey: Sir Thomas Legg KCB QC has been engaged to carry out the review of four years' claims for Additional Costs Allowance for all Members who have claimed the allowance. His terms of reference are currently under consideration. He will begin work shortly and carry out his review as quickly as possible. He will draw on external professional accountancy expertise as well as help from other sources. His findings will be published in a report in due course.⁹

The MEC published the review's terms of reference in a press notice dated 1 July 2009 (see section 1.1). When the scope of the review was altered on 20 July 2009 (see section 1.2), the MEC issued a statement about the changes on 21 July. The statement also included details of the likely timing of the publication of Sir Thomas Legg's findings and plans to publish details of Members' expense claims in the future:

The Members Estimate Committee last night agreed to ask Sir Thomas Legg to extend his current review of MPs' claims for second homes allowance (ACA) to cover the year 2008/09. Sir Thomas is already reviewing the four years of claims beginning April 2004.

The Committee's intention will be to publish the report of Sir Thomas' review in late autumn at the same time as the allowances data for 2008/09 and the first two quarters of 2009/10 are released.

Simultaneously, the MEC will publish a full list of recent allowance repayments made by individual MPs.¹⁰

3 Progress on the reassessment

In her statement on parliamentary standards on 23 June 2009, Harriet Harman, the Leader of the House, referred to "the work of Sir Thomas Legg, who is leading a team to establish what might need to be paid back from claims over the last four years". Shortly afterwards she gave a little more detail:

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 past four years and, having reconsidered each claim and the evidence submitted to support it, to report 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.¹¹

In response to the statement, Alan Duncan welcomed the appointment of Sir Thomas Legg but asked about the legal status of his findings:

May I say that Sir Thomas Legg is an excellent choice to undertake an audit of all claims from the last four years as he is a man of unimpeachable integrity? The reports of the Committee on Standards and Privilege enjoy an official status in this House and, although not strictly speaking judicial, their verdict is always taken as authoritative. What does the Leader of the House take to be the status, official or otherwise, of Sir

⁹ HC Deb 19 June 2009 c539W

¹⁰ Members Estimate Committee, [MEC Statement on Legg Review and Publication of Information about MPs' Allowances](#), 21 July 2009

¹¹ HC Deb 23 June 2009 c678

Thomas Legg's inquiry and the report we expect from him in September? Where in law will it leave a Member who has been reported unfairly as having cheated and fiddled?¹²

The Leader of the House responded in the following way:

The hon. Gentleman asked about the status of Sir Thomas Legg's inquiry. As a member of the Members Estimate Committee, the hon. Gentleman took part in the discussion that supported the House authorities in contracting Sir Thomas Legg to carry out the inquiry. This work is being done on behalf of the House authorities, and the Legg inquiry will report to the House authorities. When the House is advised that money has been over-claimed, steps will be taken to get that back.

The hon. Gentleman asked where the law stood in respect of someone who was unfairly reported by Sir Thomas Legg as having received an overpayment—*[Interruption.]*

[...]

I thought that the hon. Gentleman was asking where it left a Member if Sir Thomas Legg said that there had been an overpayment. The answer to that question—even if he did not ask it—is that Sir Thomas Legg will notify Members in advance of publishing his report that he has found that there has been an overpayment. That will enable them to say, “Actually, I have got a copy of that mortgage invoice, and here it is.” Members will be able to respond before the report is published and put into the public domain.¹³

During the course of the second reading debate on the *Parliamentary Standards Bill*, on 29 June 2009, Alan Duncan, who chairs the Audit Committees, made the following comments on Sir Thomas Legg's work:

As the Leader of the House reported in her statement last week, every receipt from the past four years will also be subject to the scrutiny of Sir Thomas Legg. He will make recommendations later this year on the individual actions of Members. I think that the whole House will accept that Sir Thomas Legg is a man of total integrity and is well suited to that purpose.¹⁴

During the course of the Report Stage on the *Parliamentary Standards Bill*, Sir Stuart Bell, a member of the House of Commons Commission, confirmed that Sir Thomas Legg's work was underway:

... I can tell the House that the review of allowances that has been authorised over the last four years has been put in train, that the House of Commons Commission, with the approval of all party leaders and Members on both sides of the House, has begun its work, and that the terms of reference have been agreed. Sir Thomas Legg is the distinguished chairman of the review body; his independence is absolute and sacrosanct, and must be seen to be so by the public. The review will cover four years of receipts, and it will be minute and thorough.¹⁵

On 5 September 2009, the *Daily Telegraph* reported on the progress of the review of past claims. It reported that:

Since June, a team of Commons officials has been going through every MP's expenses claims for the past five years.

¹² HC Deb 23 June 2009 c681

¹³ HC Deb 23 June 2009 c682

¹⁴ HC Deb 29 June 2009 c60

¹⁵ HC Deb 1 July 2009 c398

The Daily Telegraph understands that the team is now going back over those claims that are deemed to require special attention.

When that is finished, Sir Thomas Legg, the former civil servant who is leading the audit, will write to every MP, setting out whether there are any concerns about their expenses. That is expected to be concluded by the end of this month. The MPs will then be given three weeks to reply before the publication of his report later this year.¹⁶

The Daily Telegraph expected that "The results of the review will be published in late November, along with the total amount of money repaid by MPs and new expenses claims for the year to the end of March this year and for the six months to Sept 30".¹⁷

3.1 Preliminary conclusions

On 12 October 2009, Sir Thomas Legg wrote to all Members and former Members who had claimed under the ACA in the period 2004/05 to 2008/09. Each letter set out his conclusions concerning each Member's use of the ACA.¹⁸

Along with his letter, he included a note outlining the approach he had taken in reviewing Members' claims. Sir Thomas Legg has published neither the letter he sent to Members nor the note outlining his approach. However, a copy of his note, *The Review's Approach to the ACA Rules*, has been posted on the *Guardian* website.¹⁹

Sir Thomas Legg informed Members whether no further action was required on their allowance claims; whether they needed to provide additional information before he could give their claims a clean bill of health; or whether he had identified items which should not have been claimed for. On 13 October 2009, the *Daily Telegraph* reported that:

The preliminary conclusions of his inquiry have led to more than 500 MPs being asked to provide further justification for their claims. Dozens will be asked to make substantial repayments, a move which MPs are expected to challenge.

[...]

Yesterday Sir Thomas sent letters to every MP setting out his "preliminary conclusions".

He has ruled that it is unacceptable for any MP to claim more than £2,000 a year for cleaning - including dry-cleaning and window-cleaning. Maximum gardening claims have been limited to £1,000 a year. The House of Commons did not impose limits on such claims when they were submitted, but did request that MPs did not make "excessive" claims.

It is these new limits which ... are also causing increasing annoyance among back-bench MPs, who have accused Sir Thomas of overstepping his remit and applying retrospective rules.²⁰

Sir Thomas has given Members three weeks to respond to his request for more information or to make representations to him about the recommendations he has made that they should

¹⁶ Christopher Hope, "Nine in 10 MPs still face queries over expenses", *Daily Telegraph*, 5 September 2009

¹⁷ *Ibid*

¹⁸ A copy of the letter sent to Members who had to take no further action was reproduced by the *Times*: Sam Coates, "False dawn leaves frayed nerves on day of reckoning", *Times*, 13 October 2009

¹⁹ Sir Thomas Legg, *The Review's Approach to the ACA Rules*, 9 October 2009, <http://image.guardian.co.uk/sys-files/Politics/documents/2009/10/13/Leggnote.pdf>

²⁰ Robert Winnett, "£12,500 payback time for Brown", *Daily Telegraph*, 13 October 2009

make repayments.²¹ The *Guardian* speculated on the likely timetable of the next stages of Sir Thomas Legg's review process:

Early November

Those who have been asked for more information or more money have three weeks to respond if they think they have been unfairly treated. Some might opt to refer their case to the parliamentary watchdog Sir John Lyon.[...]

Late November, early December

Legg will compile all correspondence and come down either way on all 645 MPs in a report, which will take the form of recommendations to the Commons Members Estimate Committee.

Mid-December

Some MPs will refuse to pay and if they are Labour MPs, may have their legal challenges funded by trade unions. If they are QCs they may fight the decision themselves. However, it is still not clear against whom any lawsuit would be brought. Others may not bother with the law, opting to keep their heads down and wallets closed.²²

The process was also described in *Commons Digest* (a monthly update on issues and projects affecting the House service):

In July the MEC decided to extend Sir Thomas Legg's review of ACA payments to cover the financial year 2008/09 as well as the four years from April 2004. Sir Thomas wrote individually to Members on 12 October setting out his provisional conclusions, with recommendations for repayment where he found that payments were contrary to the rules and standards that applied at the time. Members have been asked to make any representations on his findings by 2 November. In November, Sir Thomas will review those representations before preparing a final report for the MEC. The MEC has made a commitment to publish his findings.²³

Members raised questions about the fairness of the process. They also expressed concerns because Sir Thomas Legg suggested retrospective limits on claims for gardening and cleaning. Harriet Harman, the Leader of the House, addressed these questions at Business Questions on 15 October 2009:

The right hon. and learned Gentleman is, I think, referring to the report of Sir Thomas Legg. Am I right in that respect? I shall take the fact that he has not responded to be a yes. I think that everyone in the House recognises that the allowance system had become discredited and all sides of the House have accepted that action needs to be taken. That is why the House agreed that, in future, we should have a wholly independent system in which Members play no part in either setting or administering it. The establishment of the Independent Parliamentary Standards Authority is under way.

A payback system was also proposed so that any overpayments outwith the rules and standards that obtained at the time could be paid back. If, for example, payments had been made from the additional costs allowance towards capital on a mortgage when

²¹ Austin Mitchell, "Tom the Tormentor takes MPs to the cleaners", *Times*, 14 October 2009

²² "What happens next?", *Guardian*, 14 October 2009

²³ "ACA Review", *Commons Digest*, Issue 7, October 2009

only payments towards interest were allowed, that would be an overpayment which would need to be paid back. Duplication of payments within the rules, paid twice by accident, provides another example of what would need to be paid back. That was the purpose of the Members Estimate Committee—chaired by you, Mr. Speaker—asking Sir Thomas Legg to conduct a review of all past claims of all Members over the last five years in order to look at whether payments were made within the rules and standards that obtained at the time. Those were the terms of reference for Sir Thomas Legg, and you, Mr. Speaker, confirmed that in your letter to all hon. Members of 12 October.

Those terms of reference also require Sir Thomas to consider any representations in respect of his preliminary findings on claims. That is why there is a three-week period in which hon. Members may respond to Sir Thomas. If they believe that there are any inaccuracies or that they are not being judged by the rules and standards that obtained at the time, they will no doubt point that out. We obviously have to judge things by the rules and standards that obtained at the time; doing anything else would be arbitrary.²⁴

In an interview on BBC Radio 4's *The Week in Westminster*, the Speaker also urged Members to abide by Sir Thomas Legg's findings. The *Daily Telegraph* reported:

MPs have been urged by the Speaker of the House of Commons to abide by Sir Thomas Legg's findings on expenses claims and repay money if requested.

John Bercow said it was important to show the public that they had "got the message" by repaying "demonstrably wrong or extravagant" claims

His warning comes amid growing discontent among MPs after Sir Thomas introduced retrospective limits on claims for cleaning and gardening.

Harriet Harman, the Leader of the House, had previously advised MPs to appeal against the inquiry's preliminary findings if they believed the criteria to be unfair.

However, in a BBC interview to be broadcast today, Mr Bercow said: "Accept the result, take the consequence, move on to the future."

He added: "If there is a choice of headlines between 'Payback Time' on the one hand and 'Westminster Whitewash' on the other, I would much rather have the former than the latter.

"The public has to see and be satisfied that we have got the message that there is public displeasure, that the process has to be changed and there must be consequences for past claims if they can be shown to be demonstrably wrong or extravagant."

The Speaker defended the right of Sir Thomas, a former senior civil servant, to introduce new limits or interpret existing rules as he saw fit. "I think we have got to accept that the Legg review was never intended simply as a receipt authorisation process," he said.

"It was always clear in his terms of reference that Thomas Legg would have the opportunity to review the wisdom or otherwise of the original payments and pass comment on the claims that people have made. We have to accept the independence of the review process. The public would expect nothing less."²⁵

²⁴ HC Deb 15 October 2009 cc448-449

²⁵ Robert Winnett, "John Bercow: Pay up and stop your moaning, the Speaker tells MPs the public 'must be satisfied' that politicians have got the message on Commons expenses", *Daily Telegraph*, 17 October 2009

There have been reports that Members would seek to fight Sir Thomas Legg's recommendations in court. However, in his article in the *Times* on 22 October 2009, Lord Pannick QC suggested that the courts would be unwilling to intervene in internal House of Commons matters:

The Members of Parliament who are threatening legal proceedings because Sir Thomas Legg, QC, has asked them to pay back expenses are in danger of throwing good money after bad. The courts would give them almost as unsympathetic a response as they are likely to face from their constituents at the general election next May. No court would interfere with the internal workings of Parliament on these issues until the process has been concluded. And then a court would consider the final decisions to be within the discretion of the parliamentary authorities.²⁶

3.2 Sir Thomas Legg's final conclusions

On 15 December 2009 Sir Thomas Legg submitted a 168-page report on repayments. The *Guardian* reported that "Many MPs have complied but the Commons authorities revealed 80 were challenging the findings"²⁷ (see section 3.3 for more details on the appeals process).

On 17 December 2009, the *Evening Standard* reported that Sir Thomas Legg's report covered 753 Members and that "about 250 MPs were being told to hand back money to the taxpayer for over-claimed sums" (another paper reported "some 200"²⁸). The press report also described measures being taken to keep the Sir Thomas Legg's conclusions secure:

A source revealed that only one copy of his final report was being handed over and that it would be sealed and held in a locked cabinet in Speaker John Bercow's offices. Every computer used by Sir Thomas's team was being cleaned up – and all his letters, files and notes were being transferred to computer discs and put in secure storage.²⁹

Note: Sir Thomas Legg continued to review the claims of some Members, after this report was submitted to the MEC, see Sections 3.4 and 3.5.

3.3 Appeals against Sir Thomas Legg's findings

On 2 December 2009, the Members Estimate Committee announced its intention to recommend that the House accept Sir Thomas Legg's final conclusions on repayments required by Members; and procedures for individual Members who wished to challenge Sir Thomas Legg's final conclusions:

Statement from Members Estimate Committee on Repayments following the Legg Review

The Members Estimate Committee has agreed to recommend to the House that any overpayments identified by Sir Thomas Legg in his review should be repaid by MPs.

The MEC expects that Members will voluntarily repay any sums found to have been over claimed but it will propose that if necessary the money be recovered by setting off sums owed against future payments of allowances and/or salary.

²⁶ David Pannick, "MPs will be throwing good money after bad if they challenge the Legg letters", *Times*, 22 October 2009

²⁷ Andrew Sparrow, "Eight MPs rebel over demands to pay back expenses", *Guardian*, 18 December 2009

²⁸ Nigel Morris, "80 MPs join revolt against ruling to repay expense claims", *Independent*, 18 December 2009

²⁹ Joe Murphy, "Bid to stop leaks over MPs resisting expenses payback", *Evening Standard*, 17 December 2009

Before this happens, however, the Committee believes MPs should be given an opportunity to show in an independent process any special reasons why it would not be fair or equitable in their particular case to require them to make the repayments.

This process is designed to reflect the opportunity an individual would have in legal proceedings to show why he or she should not be required to make restitution. That opportunity is not available to Members in this case because of parliamentary privilege.

It is intended to be an appeal process in respect of individual cases and not to reopen Sir Thomas' review as a whole.

The MEC has invited Sir Paul Kennedy, a former Lord Justice of Appeal, to consider appeals from Members once it has received Sir Thomas' report, under the following terms of reference:

To consider written submissions made by any Member against a recommendation of the Legg review of past ACA claims in his or her case to require a repayment, and showing cause why there are special reasons in the individual case that it would not be fair and equitable to require repayment either at all, or at the level recommended.

To reach conclusions on such submissions in the light of any further evidence as may be required and to report in writing as soon as possible to the Members Estimate Committee.

The appeal process will be carried out entirely on the basis of written submissions and there will be no oral hearings.

It will be completed early in 2010 and its outcome will be published by the MEC alongside Sir Thomas' findings. Sir Thomas' report will be published in full with all his findings even if there are cases where Sir Paul Kennedy recommends that a repayment should not be made or should not be made in full. Following publication the Committee will seek a resolution of the House authorising the recovery of any outstanding payments.³⁰

At its meeting on 1 December 2009, when the above statement was agreed, the MEC also agreed the timetable for lodging appeals:

The Committee agreed a statement for publication. It also agreed that the deadline for giving notice of intention to appeal should be 3pm on Monday 14 December, and the deadline for supplying grounds for appeal should be 3pm on Monday 21 December.³¹

Subsequently the dates were changed to:

17 December at 3pm for notice of intention to appeal;

23 December at 3pm for providing grounds of appeal.

At its meeting on 14 December 2009, the MEC agreed that these deadlines would not be extended.³²

³⁰ Members Estimate Committee, [Statement from Members Estimate Committee on Repayments following the Legg Review](#), 2 December 2009

³¹ Members Estimate Committee, [Minutes 1 December 2009](#), Item 1

³² House of Commons Commission, [Minutes 14 December 2009](#), Item 1 (MEC)

On 3 December 2009, the *Daily Telegraph* reported that the MEC had agreed to establish the appeals process:

MPs who made questionable expenses claims are to be given a new right to appeal against official demands for them to repay money, it was announced yesterday.

[...]

Sir Paul Kennedy, a former Court of Appeal judge and the Interception of Communications Commissioner, will consider written appeals. The announcement by the Members Estimates Committee, following a lobbying campaign by MPs, has prompted fears that many MPs may avoid censure for milking the taxpayer-funded system.

The *Daily Telegraph* anticipated that at least 50 Members could be expected to appeal. It also reported that Sir Thomas Legg would send out letters to Members outlining his final conclusions on 7 December 2009.³³

On 17 December 2009, the *Times* reported that Jeremy Browne was the first Member to announce his intention to appeal to Sir Paul Kennedy.³⁴ The following day, it was widely reported that 80 Members had announced their intention to submit appeals.³⁵

3.4 Continuing the Legg Review

On 14 December 2009, the MEC agreed:

... to ask Sir Thomas Legg to continue to process the cases of those Members and former Members who have not yet provided all the mortgage information requested until such time as the appeal process under Sir Paul Kennedy is completed, and then to make recommendations about repayments by all such Members and former Members based on the information in his possession at that time. Those affected were to be informed by letter of this decision.³⁶

Details of Sir Thomas Legg's continuing work and the appeals process, being overseen by Sir Paul Kennedy were outlined in the January 2010 issue of *Commons Digest*.

ACA Review Update

Sir Thomas Legg completed his report on 16 December.

Immediately before Christmas, Sir Thomas wrote to the small number of Members whose mortgage interest payments require further work before a final conclusion can be reached. Sir Thomas will bring these cases to a close by the time the appeals process has finished.

The report will then be updated to reflect these issues and any new repayments received over the new year. The report is expected to be published when the appeals process has reached its conclusion.

ACA appeals process

³³ Robert Winnett, "MPs are given new right of appeal over questionable claims", *Daily Telegraph*, 3 December 2009

³⁴ Philip Webster, "Lib Dem becomes first MP to fight expenses ruling", *Times*, 17 December 2009

³⁵ Nigel Morris, "80 MPs join revolt against ruling to repay expense claims", *Independent*, 18 December 2009; Andrew Sparrow, "Eight MPs rebel over demands to pay back expenses", *Guardian*, 18 December 2009; Rosa Prince, "80 MPs refuse to pay back expenses", *Daily Telegraph*, 18 December 2009

³⁶ House of Commons Commission, *Minutes 14 December 2009*, Item 1 (MEC)

The deadline for submitting written grounds of appeal in respect of the repayments recommended by Sir Thomas Legg passed at 3pm on 23 December. The appeals are now being considered by Sir Paul Kennedy, a former Lord Justice of Appeal. The Members Estimate Committee plans to publish his conclusions alongside Sir Thomas's findings early this year.³⁷

3.5 Publication of Sir Thomas Legg's Report

On 4 February 2010, the Members Estimate Committee published its *Review of past ACA payments*. The MEC had agreed a brief report on 1 February, to which it appended Sir Thomas Legg's report and Sir Paul Kennedy's findings on the appeals submitted.³⁸

In its report, the MEC confirmed that it would prefer Members who had been asked to make repayments, by Sir Thomas, to do so voluntarily. However, if necessary, payments would be recovered "by deduction from pay and allowances on the authority of a resolution of the House".³⁹

The MEC noted that Sir Thomas had undertaken further work after he had submitted his report on 16 December 2009, and that that work had been incorporated in a revised report submitted to the MEC on 1 February 2010. Sir Thomas set out "individual conclusions and recommendations" for 752 Members and former Members.⁴⁰ He noted that

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.⁴¹

The individual conclusions were set out in a standard format, recording "either 'no issues' or a statement of the payments in respect of which [Sir Thomas] conclude[d] that the MP should either make a repayment or should provide supporting".

'No issues' meant that the review had raised no issues about the validity of ACA payments made during the review period. However, Sir Thomas noted that:

... 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.

The individual conclusions noted the outcome of the successfully or partially successful appeals made to Sir Paul Kennedy.

A total of 75 Members submitted appeals to Sir Paul Kennedy, and he reported that "44 appellants have been successful", in full or part.⁴²

Sir Thomas Legg presented the following "broad picture that emerges from the review":

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

³⁷ "Members' allowances", *Commons Digest*, Issue 10, January 2010

³⁸ Members Estimate Committee, *Review of past ACA payments*, 4 February 2010, HC 348 2009-10

³⁹ *Ibid*, para 2

⁴⁰ Members Estimate Committee, *Review of past ACA payments*, 4 February 2010, HC 348 2009-10, Appendix 1: ACA Review: Report by Sir Thomas Legg, para 36

⁴¹ *Ibid*, para 90

⁴² Members Estimate Committee, *Review of past ACA payments*, 4 February 2010, HC 348 2009-10, Appendix 2: ACA repayment appeals, p172 and p177

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.

Issues and Amounts Recommended for Repayment, by ACA category

Category	Number of Issues	Recommended Repayment Amount £'000
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
Total	665	£1,305

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 overpayments, 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 £42,458.⁴³

3.6 Next steps

Late appeals

The MEC issued a statement with the Report, in which it announced that:

In a small number of cases MPs were unable to submit an appeal to Sir Paul before the December 23 deadline because they had not received the final decisions of the Legg Review in time. The MEC has agreed they should be offered the opportunity to make an appeal and 11 have submitted an appeal.⁴⁴

The process and eligibility those unable to submit an appeal by the original deadline were agreed at the MEC meeting on 1 February 2010. They were set out in the MEC's minutes:

The Committee agreed that, where Sir Thomas Legg had increased the recommended repayment for a Member whose mortgage or rent documentation arrived late since the closing date for appeals, that Member should nevertheless have the opportunity to appeal against the increase in the recommended repayment, and that the opportunity to appeal should also be available to two other Members who had not been able to exercise a right of appeal. The deadlines would be 6pm on 2 February for giving notice of appeal and 6pm on 3 February for submitting grounds of appeal.⁴⁵

Recovering overpayments

As noted above, the MEC would prefer repayments to be made voluntarily. At its meeting on 1 February 2010, the MEC agreed that "Members should either make the recommended repayments or enter into a written agreement concerning the phasing of such repayments not later than 22 February".⁴⁶

At Business Questions on 4 February 2010, in response to a question from Sir Stuart Bell, the Leader of the House indicated that she expected Members to repay any amounts recommended by Sir Thomas Legg. She continued:

... In any event, I will bring to the House a resolution to authorise the recovery from Members' salary or allowances of any amount outstanding after 22 February. All repayments will have had to be made-or firm arrangements to do so entered into-otherwise the recovery process will start after that date. The public can be confident that everything that should be paid back will be paid back, and I agree that today is an important step on the path to restoring public trust and confidence.⁴⁷

4 Cost of the review

On 22 October 2009, before the MEC established the appeals process, the cost of the review of Members' claims for Additional Costs Allowance in the period 2004/05 to 2008/09 was estimated to be approximately £1.1million:

⁴³ Members Estimate Committee, *Review of past ACA payments*, 4 February 2010, HC 348 2009-10, Appendix 1: ACA Review: Report by Sir Thomas Legg, paras 96-102

⁴⁴ Members Estimate Committee, [Statement from the Members Estimate Committee on February 4th publications](#), February 2010

⁴⁵ Members Estimate Committee, [Minutes 1 February 2010](#), Item 1

⁴⁶ *Ibid*

⁴⁷ HC Deb 4 February 2010 cc472-473

Norman Baker: To ask the hon. Member for North Devon, representing the House of Commons Commission what estimate has been made of the cost to the public purse of Sir Thomas Legg's analysis of hon. Members' expenses claims. [295070]

Nick Harvey: The review is expected to cost approximately £1.1 million.⁴⁸

Further information on the costs of the review was provided on 13 January 2010:

Sir Thomas Legg completed his review and submitted his report on 16 December. The review has cost approximately £1.1 million to date, of which Sir Thomas's fees were £142,000. This does not include the cost of the appeal process now being conducted by the right hon. Sir Paul Kennedy, or of the work which Sir Thomas has been asked to do to update parts of his report in the light of further mortgage and rent information received from a number of Members.⁴⁹

At the end of his report, Sir Thomas Legg noted that:

The total cost of this review from its commencement to the submission of this report has been approximately £1.16m.⁵⁰

⁴⁸ HC Deb 22 October 2009 cc1631W-1630W; see also, HC Deb 2 December 2009 c770W

⁴⁹ HC Deb 13 January 2010 c959W

⁵⁰ Members Estimate Committee, *Review of past ACA payments*, 4 February 2010, HC 348 2009-10, Appendix 1: ACA Review: Report by Sir Thomas Legg, para 103