



House of Commons  
Committee on  
Standards and Privileges

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**Conduct of Sir Nicholas  
and Lady Winterton**

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**Twelfth Report of Session 2007-08**

*Report and appendices, together with formal  
minutes*

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## The Committee on Standards and Privileges

The Committee on Standards and Privileges is appointed by the House of Commons to oversee the work of the Parliamentary Commissioner for Standards; to examine the arrangements proposed by the Commissioner for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; to consider any specific complaints made in relation to the registering or declaring of interests referred to it by the Commissioner; to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in the Code of Conduct which have been drawn to the Committee's attention by the Commissioner; and to recommend any modifications to the Code of Conduct as may from time to time appear to be necessary.

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### Committee staff

The current staff of the Committee are Dr Christopher Ward (Clerk), Mr Keith Neary (Second Clerk) and Miss Michelle Owens (Secretary).

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# Contents



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<b>Report</b>	<i>Page</i>
<b>Conduct of Sir Nicholas and Lady Winterton</b>	<b>3</b>
Introduction	3
Background	3
Conclusions	4
<b>Appendix 1: Memorandum from the Parliamentary Commissioner for Standards</b>	<b>8</b>
<b>Appendix 2: Letter to the Clerk of the Committee from Lady Winterton, 12 June 2008</b>	<b>37</b>
<b>Formal minutes</b>	<b>38</b>
<b>Reports from the Committee on Standards and Privileges in the current Parliament</b>	<b>39</b>



# Conduct of Sir Nicholas and Lady Winterton

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## Introduction

1. We have received a memorandum from the Parliamentary Commissioner for Standards on the outcome of his investigation of complaints against Sir Nicholas Winterton, the Member for Macclesfield and Ann Winterton, the Member for Congleton, ('the Wintertons') by Mr Gary Poole and Mr Michael Barnbrook. The complaints related to claims against their respective Additional Costs Allowances (ACAs) made by the Wintertons in respect of the rental of a property in London.
2. The Commissioner's report is reproduced at Appendix 1. In accordance with our usual practice, we have shown the Wintertons copies of the Commissioner's report. A copy of their response is reproduced at Appendix 2.

## Background

3. The complaints relate to the Wintertons' use of a flat in London which they purchased on a mortgage in the early 1990's and have occupied since then as their 'second home'.<sup>1</sup> Initially they claimed the mortgage interest against the ACA.<sup>2</sup> Subsequently they paid off the mortgage from their own resources, following advice about their likely Inheritance Tax liability. The Wintertons were further advised to put the flat into a trust, of which they are two of the three trustees.<sup>3</sup> The beneficiaries of the trust are their three children.<sup>4</sup> The trust came into existence in February 2002. Since then, the Wintertons have continued to occupy the property as tenants of this trust, paying a market rent based on an independent valuation,<sup>5</sup> and they have each charged half of the rent against their respective ACAs.
4. For the duration of the period following the purchase of the property up to the creation of the trust, the Wintertons held both the legal title to the property and the beneficial interest. Following the establishment of the trust, the three trustees held the legal title on trust for those who held the beneficial interest, in this case the Wintertons' three children. This is relevant to the question of whether and to what extent the arrangements fell within the scope of what was permissible for reimbursement under successive revisions of the ACA rules.

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1 The property has throughout been designated by each of them as the property in respect of which they are eligible to claim against the ACA.

2 WE 7, p. 28.

3 WE 8, p. 29.

4 WE 17, p. 35.

5 WE 7 and WE 8, p. 28. and 29.

5. Before entering into the arrangements described above, the Wintertons contacted the Fees Office<sup>6</sup> to ascertain whether these would be acceptable as they wished to continue living in the flat (and, by inference, meeting the cost from their ACAs). They say that they would not have gone ahead if the proposed arrangements had not been acceptable to the Fees Office.<sup>7</sup> No written record exists of the terms of the assurance or the basis on which it was sought, but from a record of discussions between the Wintertons and the Department of Resources in March 2008, it appears to derive originally from advice given no later than 1998 that paying a market rent, albeit under a family trust arrangement, was not against the rules set down by the House. Likewise, no written record exists of these discussions.<sup>8</sup>

6. Since the Wintertons established their trust, there have been two relevant changes in the rules in the Green Book. In June 2003, a provision prohibiting claims for “the cost of leasing accommodation from yourself” was introduced both in respect of the ACA and the Incidental Expenses Provision (IEP). The second relevant change was in July 2006, when a provision was introduced explicitly prohibiting the use of the ACA to meet the cost of “leasing accommodation from....any organisation....in which you or a....family member—have an interest; or [from] a....family member.”<sup>9</sup>

## Conclusions

7. As the Commissioner has pointed out,<sup>10</sup> the arrangement entered into by the Wintertons in February 2002 by which they transferred their interest in their London property to a family trust and thereafter continued to occupy the property as tenants of the trust is an unusual use of the ACA. He also pointed out that it benefited the family, their estate and assisted their personal inheritance tax planning. We agree with the Commissioner that, given their substantial personal interest in the arrangements, it would therefore have been prudent for the Wintertons, once having gone ahead with the arrangements, to have checked to ensure that charging the rent to the ACA remained consistent with the rules, particularly when these were changed.

8. We accept the Wintertons’ assurances that they discussed with the Fees Office the likely acceptability of their proposed arrangements before they entered into them. We note, though, that the key assurance on which they apparently relied was given at least three years before the trust was established. It would have been prudent for them to have taken the initiative of checking again when they were finally ready to proceed that their proposed arrangements remained acceptable for ACA purposes.

9. As the Commissioner recognises, the complaints raise two specific questions:

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6 The Fees Office was part of the Department of Finance and Administration, now incorporated in the Department of Resources.

7 WE 7, p. 28.

8 WE 9, p. 30.

9 WE 6, p. 27.

10 Appendix 1, para. 37.

- did the arrangements made by the Wintertons fall foul of the 2003 prohibition on Members meeting from the ACA the cost of renting from themselves; and
- did the arrangements fall foul of the 2006 prohibition on meeting from the ACA the costs of leasing accommodation directly or indirectly from a family member?

10. The Commissioner considers it ‘arguable’ that the change to the Green Book in 2003 put the Wintertons’ arrangements outside the scope of the rules, but does not consider it productive or necessary at this remove to attempt to resolve this issue.<sup>11</sup> **We agree, but also share the Commissioner’s view that it was unfortunate that there was no recognition that the Wintertons’ arrangements might need to change.**

11. **The position is unequivocal, though, in respect of the rules in force from July 2006. We agree with the Commissioner and the Department of Resources that the family trust, which had become the Wintertons’ landlord in February 2002 when the property was transferred, was an organisation in which they had an interest (as trustees) and their children had an interest (as the beneficiaries). It was therefore inappropriate for the rent to be reimbursed thereafter through the ACA and we agree with the Commissioner that the complaints should be upheld in this respect.**<sup>12</sup>

12. The Wintertons advance three principal arguments to justify the current arrangements:
- they were approved by the Fees Office before they were put into place, and thus not affected by the subsequent rule changes;
  - it is unreasonable to change the arrangements in the course of a Parliament; and
  - there was no additional cost to the taxpayer.

We deal with each in turn below.

13. On the question of prior approval over-riding future rule changes, we agree with the Commissioner that, while there may well be a need for transitional arrangements in particular cases, agreements between the Department and individual Members as to the interpretation of the rules of the House at a particular time should not normally be expected to override changes in the rules of the House.<sup>13</sup> However, we nonetheless consider it unfortunate that the July 2006 changes, in particular, did not include any transitional provisions, as Members could not reasonably have been expected to have made new arrangements overnight.

14. On the question of changes to the rules in the course of a Parliament, we do not accept that this is in principle unreasonable, provided adequate notice is given, and suitable arrangements are made to deal with cases of difficulty or hardship. We note that such

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<sup>11</sup> Appendix 1, para. 37.

<sup>12</sup> Appendix 1, para. 38-9.

<sup>13</sup> Appendix 1, para. 36.

changes have been made in the past, notably in this context in 2003 when the prohibition was introduced on the reimbursement from both the ACA and the IEP of the cost of Members leasing accommodation from themselves.

15. As to whether the arrangements could be justified on the basis of their impact on public funds, we do not accept the relevance of the Wintertons' argument. It is undoubtedly true that the identity of the landlord is irrelevant on this ground if a market rent is being paid (as it was in this case). However, the key feature which made the arrangement unacceptable post July 2006 in terms of the cost being met from the ACA was the fact that the overall effect of the arrangements was that members of the Wintertons' family benefited directly from the payment of rent, which was in substance met from the ACA, to a trust of which their children are the beneficiaries. This the rules explicitly prohibited.

16. We are also concerned about the length of time their arrangements had been allowed to continue. The Department of Resources made clear to the Wintertons as long ago as February 2007 that the arrangements were inconsistent with the current requirements of the Green Book.<sup>14</sup> That should have alerted the Wintertons to the need to review them. The ultimate responsibility for ensuring that their ACA claims remained within the rules rested, of course, with the Wintertons. However, the Department of Resources was at fault in this case in not responding to the outstanding letter from Lady Winterton.<sup>15</sup>

17. After their arrangements were publicised in February 2008, the Wintertons volunteered to end them on or before March 31 2009, "in order not to cause embarrassment or difficulty for the Fees Office or the House of Commons",<sup>16</sup> a proposal which the House authorities have accepted.<sup>17</sup>

18. In their observations on his memorandum, the Wintertons argue that the Commissioner "appears not to have shared equitably the responsibility for what has occurred between the Department of Resources (formerly the Fees Office) and ourselves....we are perfectly agreeable to share the responsibility but feel that we have not received fair treatment [from the Commissioner] in this regard".<sup>18</sup> We do not accept this argument. Whatever the shortcomings of the Department of Resources, we repeat that the final responsibility rests with Members themselves for ensuring that their use of allowances is above reproach, as successive editions of the Green Book have made clear. The onus is also on them to seek advice in cases of doubt and to read the Green Book with care.

19. In our view, the Wintertons' arrangements have been in breach of the rules applying to the ACA since July 2006, a fact of which they were officially made aware in February 2007. This should have been addressed at an earlier stage.

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14 WE 14, p. 34.

15 WE 15, p. 34. See also WE 13, p. 33.

16 WE 17, p. 35.

17 WE 9, p. 30, and WE 10, p. 32.

18 Appendix 2, p. 37.

20. We accept, as did the Commissioner,<sup>19</sup> that the Wintertons have at no stage attempted to conceal their arrangements. While it is true that, once these had attracted the attention of the media, the Wintertons took steps to end them and to find alternative London accommodation, we believe that they could and should have begun to do so earlier. Had they taken this course of action, they might reasonably have expected to have made suitable arrangements by the end of the 2007 Summer Recess. **We therefore recommend that no further claims should be paid against the ACA in relation to the rent payable in respect of their current property from September 1<sup>st</sup> 2008. The Wintertons will by then have benefited from what amounts to a grace period of two years, which in our view is, in all the circumstances, more than adequate.**

21. The Commissioner has also drawn attention to a number of general lessons arising from this complaint, designed to avoid Members getting into difficulties in the sensitive area of use of allowances.<sup>20</sup> **We commend these to the House.**

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19 Appendix 1, para. 40.

20 Appendix 1, para. 41.

# Appendix 1: Memorandum from the Parliamentary Commissioner for Standards

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## Contents

	<i>Page</i>
<b>Complaints against Sir Nicholas Winterton and Lady Winterton</b>	<b>9</b>
Introduction	9
The Complaint	9
Relevant Rules of the House	10
My Inquiries	10
Findings of Fact	15
Conclusion	17
<b>Written evidence received by the Parliamentary Commissioner for Standards</b>	<b>20</b>
1. Article in the Sunday Telegraph, 3 February 2008	20
2. Article in the Mail on Sunday, 3 February 2008	20
3. Letter to the Commissioner from Mr Gary Poole, 3 February 2008	23
4. Letter to the Commissioner from Mr Michael Barnbrook, 3 February 2008	26
5. Letter to the Commissioner from Mr Michael Barnbrook, 10 February 2008	26
6. Letter to Sir Nicholas Winterton from the Commissioner, 14 February 2008 (identical letter sent to Lady Winterton)	27
7. Letter to the Commissioner from Lady Winterton, 18 March 2008	28
8. Statement by Sir Nicholas and Lady Winterton, 4 February 2008	29
9. Letter to Sir Nicholas and Lady Winterton from the Director of Operations, Department of Resources, 12 March 2008	30
10. Letter to Lady Winterton from the Director of Operations, Department of Resources, 18 March 2008	32
11. Letter to the Director of Operations, Department of Resources, from Lady Winterton, 18 March 2008	32
12. Letter to the Director of Operations, Department of Resources, from the Commissioner, 19 March 2008	32
13. Letter to the Commissioner from the Director of Operations, Department of Resources, 18 April 2008	33
14. Letter to Lady Winterton from a Validation Officer, Department of Finance and Administration, 9 February 2007	34
15. Letter to a Validation Officer, Department of Finance and Administration from Lady Winterton, 11 February 2007	34
16. Letter to Lady Winterton from the Commissioner, 23 April 2008	34
17. Letter to the Commissioner from Lady Winterton, 28 April 2008	35

# Complaints against Sir Nicholas Winterton and Lady Winterton

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## Introduction

1. This memorandum reports on a complaint that Sir Nicholas Winterton, the Member for Macclesfield, and Lady Winterton, the Member for Congleton, may have breached the rules of the House in claiming Additional Costs Allowance in respect of their rental of a property in London held in trust for their children.

2. On Sunday 3 February 2008, two Sunday newspapers carried articles reporting that Sir Nicholas and Lady Winterton had put their London apartment into a family trust and subsequently claimed the cost of their rent for that apartment from the House of Commons Additional Costs Allowance.<sup>1</sup> Shortly afterwards, I received a number of complaints from members of the public based on those newspaper articles.

## The Complaint

3. Under the procedures approved by the Committee and based on the Standing Orders of the House, when I receive a complaint I consider whether the complainant has provided sufficient evidence to merit at least a preliminary inquiry that the Member may have breached the Code of Conduct for Members or its associated rules. That evidence can either be evidence put together by the complainant, or it can draw on evidence provided in newspaper reports. I do not accept complaints, however, based on newspaper reports alone where there is not sufficient foundation identified in the report for the allegations made. Where a complainant provides no information beyond that which I am already considering on the basis of another complainant's letter, I do not join the subsequent complainant to the complaint.

4. In this case, after careful consideration, I concluded that the complaints I received from Mr Gary Poole dated 3 February<sup>2</sup> and from Mr Michael Barnbrook dated 3 February<sup>3</sup> and, following my initial response to that letter, a further letter dated 10 February,<sup>4</sup> provided sufficient evidence to merit at least a preliminary inquiry.

5. In essence, the complaint is that the arrangements which Sir Nicholas Winterton and Lady Winterton made for meeting the costs of overnight stays in London away from their main home are contrary to the rules laid down in the Green Book on Parliamentary Salaries, Allowances and Pensions, and in particular the provisions in Section 3 dealing with the Additional Costs Allowance.

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1 WE 1 and WE 2.

2 WE 3.

3 WE 4.

4 WE 5.

## Relevant Rules of the House

6. Paragraph 14 of the Code of Conduct for Members of Parliament provides as follows:

*“Members shall at all times ensure that their use of expenses, allowances, facilities and services provided from the public purse is strictly in accordance with the rules laid down on these matters, and that they observe any limits placed by the House on the use of such expenses, allowances, facilities and services.”*

7. The Green Book on Parliamentary Salaries, Allowances and Pensions provides guidance and rules on the use of allowances “*wholly, exclusively and necessarily*”<sup>5</sup> incurred to enable a Member to stay overnight away from their main residence. The rules on the Additional Costs Allowance have developed over recent years in successive editions of the Green Book. The first relevant reference was in the Green Book published in June 2003 as follows:

*“3.12.1 The following expenditure is not allowable: ...*

*The costs of leasing accommodation from yourself.”*

8. The next relevant change to the Green Book was in July 2006, when the following text was incorporated:

*“3.3.1 Principles*

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

*3.3.2*

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

*3.3.3*

*ACA must not be used to meet the costs of a mortgage or for leasing accommodation from:*

- yourself;*
- a close business associate or any organization or company in which you—or a partner or family member—have an interest; or*
- a partner or family member.”*

## My Inquiries

9. Following my consideration of the complaints I had received from Mr Poole and Mr Barnbrook, I wrote separately but in identical terms to Sir Nicholas and to Lady Winterton

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5 Section 3.1.1, The Green Book on Parliamentary Salaries, Allowances and Pensions, June 2003.

on 14 February to invite their comments.<sup>6</sup> I informed Mr Poole and Mr Barnbrook that I was doing so. In particular, I invited both Members to let me know:

- b) the sequence of events which led them to establish the arrangements for their overnight stays in London provided for under the Additional Costs Allowance;
- c) any advice they received from the House authorities either before or after instituting these arrangements;
- d) the size of the claims they had made in respect of their overnight stays in London under the Additional Costs Allowance.

10. Lady Winterton responded on 18 March on behalf of herself and Sir Nicholas.<sup>7</sup> The letter enclosed a copy of a statement made by Sir Nicholas and herself on 4 February;<sup>8</sup> a letter of 12 March 2008 to them from the Director of Operations in the Department of Resources of the House of Commons<sup>9</sup> (the Department now includes what was formerly the Fees Office), a further letter of 18 March from the Director of Operations<sup>10</sup> and a copy of Lady Winterton's reply of the same date.<sup>11</sup>

11. Lady Winterton's letter said that she and her husband had lived in the flat concerned since the early 1990s. They were reimbursed initially by the Fees Office for mortgage interest payments. Subsequently, they considered paying off the mortgage. Shortly after that, on advice from their accountants and solicitor, and taking account of matters including their future inheritance tax liability, they decided to put the flat into a trust. That trust was established in February 2002. Before they went ahead, they had ascertained from the Fees Office in the House of Commons whether the arrangement was acceptable as they wished to continue to live at the flat. They would not have proceeded with the arrangement if permission had not been forthcoming. Following their re-election in 2005, and the publication of the new rules in July 2006, they did not even consider that the new guidance could be applied retrospectively. They believed they had "*grandparents' rights*". Subsequently, the Fees Office wrote to them about the arrangement and they replied in February 2007.<sup>12</sup> They heard nothing further and naturally assumed everything was in order. The Department continued to reimburse them for the legitimate expenses which they claimed.

12. The letters of 12 and 18 March 2008 from the Director of Operations at the Department of Resources annexed to Lady Winterton's letter set out his understanding of the sequence of events and the agreement which he had now reached with the two

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6 WE 6.

7 WE 7.

8 WE 8.

9 WE 9.

10 WE 10.

11 WE 11.

12 WE 14 and 15.

Members.<sup>13</sup> The letter of 12 March noted discussions which the Members reported they had had with the then Director in the late 1990s, when that Director had indicated that paying a market rent, albeit under a family trust arrangement, was not against the rules set down by the House. Neither the Members nor the Department had any documentary record of these discussions.

13. The letter noted that it was arguable whether the new form of words in paragraph 3.12.1 of the June 2003 Green Book<sup>14</sup> might have led either Sir Nicholas or Lady Winterton or senior staff in the Department to revisit the arrangements which had been agreed previously. He said that the strict technical position was, perhaps, that the Members were not leasing accommodation from themselves. Nevertheless, a further look at the matter did not seem to have taken place within the Department at that time. Nor was such a review prompted by Sir Nicholas or Lady Winterton. The letter noted also the Members' views that the current arrangement was within the rules at the time it was entered into; that they had taken advice from senior staff; that they considered the 2006 rules were themselves difficult to interpret; that changing the rules during the life of a Parliament and expecting Members to abandon long-standing personal arrangements was unreasonable; and that they considered that market conditions meant that any new arrangement was unlikely to result in a saving to the taxpayer.

14. The Director of Operations accepted in his letter that the two Members had not attempted to conceal the arrangement at any stage. In February 2007 Lady Winterton had written to the Department about the trust arrangement.<sup>15</sup> Due to an administrative error, a draft reply was prepared but never sent.

15. Nevertheless, the Director noted that the House could not agree to the Members' current housing arrangements continuing for the remainder of the Parliament, as he believed the rules of the Green Book were clear on this point. The Director recognised, however, that making alternative housing arrangements in London against the background of the Members' busy Parliamentary and constituency schedules was not a simple matter. He had therefore proposed, and the Members had agreed, that the current reimbursement of rent for the property must come to an end within twelve months. His subsequent letter of 18 March 2008,<sup>16</sup> also attached to Lady Winterton's letter to me, confirmed that the relevant end-date was 31 March 2009. The Members would be eligible to claim from the Additional Costs Allowance for any alternative arrangements, subject to the normal rules in the Green Book. Lady Winterton's letter of 18 March to the Director accepted this as a satisfactory conclusion.<sup>17</sup>

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13 WE 9 and 10.

14 See paragraph 7 above.

15 WE 15.

16 WE 10.

17 WE 11.

16. I wrote to the Director of Operations in the Department of Resources on 19 March to invite his comments on the application of the Green Book over the years from February 2002 and for other comments on the letter from Lady Winterton.<sup>18</sup>

17. The Director of Operations replied to me with his letter of 18 April.<sup>19</sup> He noted that the Green Book in 2002 was silent on the matters relevant to Sir Nicholas and Lady Winterton. In 2003 the position changed, and changed again in July 2006. He had no doubt that as of July 2006 Sir Nicholas and Lady Winterton's arrangements "*fell foul of the rules*". He thought that it was likely that the arrangement did not meet the requirements of paragraph 3.3.3 as well as paragraph 3.3.2. He noted that there was an element of doubt by legal advisers as to whether the wording of paragraph 3.3.2 of the Green Book for July 2006<sup>20</sup> encompassed the trust arrangements established by the two Members. But the Green Book was not intended to be a legal text nor could it anticipate the variety of circumstances that might arise. The Department of Resources' interpretation was that the trust arrangement described by Lady Winterton "*was an arrangement whereby someone close to her and her husband obtained an immediate benefit from public funds*". In this sense, he considered that the trust arrangement was outside both the letter and spirit of the rules. He also agreed with what he took to be an implication in my letter to him of 19 March that in this case the Additional Costs Allowance was used for leasing accommodation from a family member.<sup>21</sup>

18. Turning to the retrospective nature of any rule change, the Director said that the Department would rarely, if ever, seek to recover money or goods for past payments which were acceptable at the time when they were made but had subsequently become ineligible expenditure. They would, however, expect Members to meet new rules prospectively. In cases like the present one, they would generally allow a period of time for Members to make new arrangements. The Department had no formal or informal rule which enshrined "*grandparents' rights*", by which he took Lady Winterton to mean that an existing arrangement should be allowed to continue undisturbed as it had been entered into at a time when it met the rules. This was not a practice generally applied by the Department and it would not, in his view, be appropriate in this case.

19. The Director commented that the Department did not routinely check whether any rental paid through the Additional Costs Allowance was a fair market rent, the underlying assumption being that rentals would always be commercial arrangements on commercial terms. The average rental payment by Members who rented a London property was about £1300 a month. Sir Nicholas and Lady Winterton each paid some £900 a month in rent, below the individual average. A notice period of up to six months in such rental agreements was not unusual. The time necessary to find suitable alternative accommodation by Sir Nicholas and Lady Winterton would to some extent depend on the time available in between their busy Parliamentary schedules.

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18 WE 12.

19 WE 13.

20 See paragraph 8 above.

21 WE 12. See paragraph 8 above.

20. The Director annexed the letters of February 2007 referred to by Lady Winterton.<sup>22</sup> The relevant paragraph of the letter of 9 February 2007 from the then Department of Finance and Administration read as follows:

*“I note that the tenancy agreement states that you are both the landlord and the tenant. I should be grateful if you would confirm if this is correct as I must inform you that you may not claim the costs of leasing accommodation from yourselves; or a partner or family member. These rules are set out on page 11 of the Green Book (section 3.3.3).”*

21. Lady Winterton’s reply of 11 February 2007 noted that the current accommodation arrangements had been in place for five years and were agreed by the Fees Office at the time. She confirmed that the lease was owned by a trust and stated that the monthly rent was set at a full commercial rent assessed and recommended by an independent firm of surveyors and estate agents.

22. The draft reply from the Department—which was never sent—to Lady Winterton’s letter of 11 February 2007 drew attention to the new rules in Section 3 of the 2006 edition of the Green Book and asked that the Members send the Department a copy of the trust deed to enable it to make a judgment about whether the rule changes affected their claims for the Additional Costs Allowance.

23. Having considered the Director of Operations’ letter, I wrote to Lady Winterton on 23 April 2008.<sup>23</sup> I asked whether she and Sir Nicholas accepted, in the light of this letter, that they were in breach of the rules as established in July 2006. I asked too whether either of them had reviewed the position when the Green Book changed in 2003. I invited them to send me a copy of the market rent assessment made by the firm of surveyors and estate agents. As they were now making alternative arrangements for their accommodation in London, I asked whether it would be desirable and possible for them to make the necessary changes before February 2009. Finally, I asked to see the trust deed or to have a summary of how it operated.

24. Lady Winterton responded on 28 April.<sup>24</sup> She quoted the letter of 12 March 2008 from the Director of Operations which I have summarised above.<sup>25</sup> Since she and Sir Nicholas had heard nothing from the Fees Office since 9 February 2007, they “*naturally assumed that the original arrangement remained acceptable*”. Having agreed the arrangement in the late 1990s prior to the establishment of the trust, neither her husband nor she felt it necessary at any stage to consult the Green Book, believing that an agreed arrangement was a contract only terminated with notice by one or both parties. Following meetings with the Director of Operations and with the Clerk and Chief Executive of the House of Commons, they had volunteered to end the current arrangement on or before 31 March 2009 in order

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22 WE 14 and 15.

23 WE 16.

24 WE 17.

25 WE 9, see also paragraphs 12-15 above.

not to cause embarrassment or difficulty for the Fees Office or the House of Commons. The House authorities had accepted this proposal. Sir Nicholas and she had already commenced looking for an alternative property. There were limits on their time given their Parliamentary and constituency commitments.

25. In her letter, Lady Winterton stressed that the arrangement they had had since the beginning of 2002 had not cost the taxpayer any additional money: rather it had cost the taxpayer less. There were three trustees—herself, Sir Nicholas and a solicitor. The trustees were responsible for ensuring the rent was a current open market rent recommended by a independent company specialising in this field. As trustees they were also responsible for ensuring appropriate maintenance and decoration. The beneficiaries whom they represented were their two sons and their daughter. They had themselves personally funded over the years some improvements and refurbishments to the property and provided furniture at their own expense. Attached to the letter was a statement of 30 November 2005 by a firm of independent property assessors confirming that a rental for the property of £450 a week continued to be appropriate and conformed to prevailing market conditions, and a statement from the same firm of 21 February 2008 advising that a rent of £500 a week could be applied as the current rental value of the property.

26. Following my showing Sir Nicholas and Lady Winterton the factual sections of my memorandum, she wrote to me on 2 June 2008 to make two further comments. First that her and Sir Nicholas' understanding was that a verbal agreement, if and when implemented, was considered to be a contract in common law, whilst the Green Book gave guidance but was not designed as a legal document. And secondly she emphasised that the Director of Operations had accepted in his letter that they had not attempted to conceal this arrangement at any stage.<sup>26</sup> This was an important point because their integrity had been challenged by the complainant, and they both wished to refute that allegation.

## Findings of Fact

27. Sir Nicholas Winterton and Lady Winterton have occupied a property in Central London since the early 1990s which they have used for overnight stays in their capacity as Members of Parliament. They have been reimbursed from Parliamentary allowances, initially for the mortgage interest payments for that property and subsequently for rental costs, the rental payments being payable to a trust which they established in respect of the property in February 2002. They established the trust after discussions with the House authorities, who agreed that payment of rental from Parliamentary allowances was permissible in these circumstances. There is no formal or other record of the discussions or of the agreement.

28. The trustees are Sir Nicholas and Lady Winterton and a solicitor. The beneficiaries of the trust are Sir Nicholas and Lady Winterton's three children. The trustees are responsible

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<sup>26</sup> See paragraph 14 above and WE 9.

for setting a market rent and for ensuring the appropriate maintenance and decoration of the property. The trustees ensure the rent is a current open market rent recommended by an independent specialist company.

29. Until June 2003, there were no rules or guidance of the House which specifically addressed the sort of trust arrangements established by Sir Nicholas and Lady Winterton and in particular whether or not it was permissible to make payments to such a trust from the Additional Costs Allowance for the cost of a Member's accommodation in London. In June 2003 the revised rules stated that the costs of leasing accommodation "*from yourself*" was not an allowable claim under the Additional Costs Allowance. In July 2006, the rules became more specific, in particular by stating that a Member must avoid any arrangement which may give rise to an accusation that they are or someone close to them is obtaining an immediate benefit or subsidy from public funds. And it ruled that the Additional Costs Allowance must not be used to meet the costs of a mortgage or for leasing accommodation from a close business associate or any organisation or company in which the Member—or a partner or family member—has an interest; or from a partner or family member. These rules remain in force. Sir Nicholas and Lady Winterton did not believe that revisions to the rules in the Green Book could be applied to arrangements entered into by them or any other Member before the changes were promulgated. They believed that the arrangement which they had agreed with the House authorities before the trust was established was in effect a contract which could not be altered by subsequent rule changes, but only on notice by one of the parties. The Director of Operations in the Department of Resources does not accept that the Department has any formal or informal rule which enshrines such "grandparents' rights"—it is not a practice generally applied and would not, in his view, be appropriate in this case.

30. Following the change in the rules included in the July 2006 edition of the Green Book, the then Department of Finance and Administration, which is now the Department of Resources, wrote to Sir Nicholas and Lady Winterton in February 2007 drawing their attention to the rule change represented by Section 3.3.3 of the revised Green Book and informing them that they might not claim the costs of leasing accommodation from themselves, or a partner or family member. Lady Winterton replied saying that the current accommodation arrangements had been in place for five years and were agreed by the Fees Office at the time. (The Fees Office subsequently became part of the Department of Finance and Administration and then the Department of Resources.) Lady Winterton noted that the lease was owned by a trust. While the Department prepared a reply which would have made clear that it would be necessary to make a judgement as to whether the rule changes affected their claims for Additional Costs Allowance, by an oversight it was never sent. Since Sir Nicholas and Lady Winterton had received no reply, they concluded that the existing arrangements were still within the rules. The Department has continued to pay claims for the rental of the property under the Additional Costs Allowance.

31. Following press reports in February 2008 about these arrangements, Sir Nicholas and Lady Winterton entered into discussions with the House authorities. The outcome of those discussions was that Sir Nicholas and Lady Winterton agreed with the House authorities to end the current arrangement on or before 31 March 2009. The Department of Resources

will accordingly not fund the rent for the property after 31 March 2009. Sir Nicholas and Lady Winterton have already started looking for an alternative property, but their time is constrained by Parliamentary, constituency and other commitments.

32. The market rent for the property was assessed and recommended by an independent firm of surveyors. The current rent is £21,600 per year, which is a little below the independently assessed rent of £450 per week. The House authorities have reimbursed the full rental cost of the property since 2002 and will do so until 31 March 2009, or until Sir Nicholas and Lady Winterton find suitable alternative accommodation, whichever is sooner.

33. The Director of Operations at the Department of Resources has no doubt that the arrangements which Sir Nicholas and Lady Winterton put in place in 2002 to transfer their property to a family trust and to have the rental reimbursed from the Additional Costs Allowance fell foul of the rules set out in the July 2006 edition of the Green Book. Sir Nicholas and Lady Winterton have not expressed a view on this judgement.

## Conclusion

34. The arrangements under which Members claim allowances have changed substantially in recent years. They are likely to change again. Members are well advised to check their own arrangements against each succeeding version of the Green Book and other rules and guidance from the House authorities.

35. In this case I accept that Sir Nicholas and Lady Winterton consulted the House authorities, initially in 1998, before they established the trust arrangements for their property in February 2002. There was at that stage nothing in the Green Book's rules or guidance which prevented them claiming from the Additional Costs Allowance for rental payments to the trust of which they were two of the three trustees and of which their children were the beneficiaries.

36. I accept the views of the Director of Operations that the rules of the House are not legal documents and cannot easily be subject to normal legal analysis. They are a mixture of guidance for Members and rules established by the House. The spirit as well as the letter of the rules is important. Members have a responsibility to abide by both. I believe it is right that the latest version of the rules should be taken to apply to all serving Members. In equity, and to preserve consistency and clarity in the arrangements for Members, all Members should be subject to the same rules at the same time for the same set of circumstances however long they may have been in the House, unless for some reason it is impossible for them to be so. Except in certain specified cases, therefore, Members should expect to have to change their arrangements if, when new rules are introduced by the House, those arrangements no longer comply. But they should be given reasonable time to do so. Agreements between the Department and individual Members as to the interpretation of the rules of the House at a particular time should not normally be expected to override changes in the rules of the House. I conclude, therefore, that the

successive changes to the Green Book should have been applied to the arrangements established by Sir Nicholas and Lady Winterton in 2002.

37. It is arguable that the change to the Green Book in 2003 put the arrangements established by Sir Nicholas and Lady Winterton outside the scope of the rules. This was because it could be argued that Sir Nicholas and Lady Winterton were in some senses leasing the accommodation from themselves since they were the majority trustees in the trust. Sir Nicholas and Lady Winterton did not raise this issue at the time, and neither did the Department. I accept that it never occurred to Sir Nicholas or Lady Winterton to do so. I do not think it productive or necessary at this remove to attempt to resolve this issue. It would be unfair to apply the standards of the current time to the actions and thinking of nearly five years ago. Nevertheless it is unfortunate that Sir Nicholas and Lady Winterton did not revisit the arrangement in 2003 with the help of the House authorities: it was an unusual arrangement when first entered into, it was one which benefited their family, their estate and assisted their personal inheritance tax planning and in such circumstances it would have been prudent for them to check, following each revision to the rules, whether the arrangements still met the changing expectations of Members.

38. But whatever may have been the position in June 2003, I consider, and agree with the Director of Operations, that the arrangements were clearly not within the terms of the rules as established in July 2006. The new provisions introduced then prohibit meeting from the Additional Costs Allowance the costs of leasing accommodation from any organisation in which a Member, a partner or family member has an interest. They also require Members to avoid any arrangement which may give rise to an accusation that the Member or someone close to them is obtaining an immediate benefit from public funds. In this case, the Members' children clearly had an interest in the trust and therefore in the benefits which the trust secured from the public funds used to meet the rental costs of the property. There is no evidence that the immediate financial benefit to the trust was greater than could have been secured by renting the property on the open market. But the trust did not have to carry the risks of renting on the open market. It must be presumed that renting to the two Members must have been in the interests of the trust and its beneficiaries, otherwise the trustees would have risked being in breach of their fiduciary duty under the trust when they allowed the arrangement to continue. And the arrangement was, as I have said, beneficial to the family's inheritance tax planning and to the family members who benefited from the trust.

39. My finding on the complaint, therefore, is that the arrangement for using the Additional Costs Allowance to meet the costs of leasing accommodation from the trust established by Sir Nicholas and Lady Winterton was a clear breach of the rules of the House following the change to those rules in July 2006. I accept, however, that the rental costs made no additional call on public funds as a result of the trust arrangement compared to alternative accommodation the Members might have rented. Had Sir Nicholas and Lady Winterton recognised that changes to the rules applied to their pre-existing arrangement, I am in no doubt that the Department would have advised them to bring this arrangement to an end and the resultant public criticism of their arrangements would have been avoided. It is unfortunate that the correspondence initiated by the then Department of

Finance and Administration in February 2007 was, through an oversight in the Department, not followed to a conclusion. But the Department of Finance and Administration's initial letter should have alerted the Members to the problem and to the risks they ran in concluding that the rules did not apply to pre-existing arrangements. And the Department itself might have been more aware of the risks the Members' were running if Lady Winterton's response to the Department of 11 February 2007 had given some information about the nature of the trust which owned the lease of the property they rented.

40. Nevertheless, I accept that Sir Nicholas and Lady Winterton have not at any stage attempted to conceal the arrangement they had entered into. And I recognise that Sir Nicholas and Lady Winterton have recently taken significant action to rectify this situation. It is clearly undesirable that the Additional Costs Allowance should continue to be paid for a property managed under this trust arrangement for longer than is absolutely necessary. Equally, it would be unfair and unreasonable to terminate the arrangement without allowing the Members reasonable time to put alternative arrangements in place. 31 March 2009 has been agreed by the House authorities as the end date for continuing the current arrangement. I note that this is the last date and not the earliest date for ending the arrangement. I welcome the fact that Sir Nicholas and Lady Winterton are already looking for an alternative property. I recognise their heavy Parliamentary and constituency commitments. I hope, however, that their search will be concluded successfully earlier rather than later in the months remaining of this arrangement.

41. I would draw attention to the following lessons arising from my consideration of this complaint:

- i) the rules of the House, and changes to those rules, should be expected to apply to existing arrangements established by Members unless explicit transitional arrangements are made;
- ii) it is wise therefore for each Member to check carefully all changes in the rules of the House and the guidance issued under those rules and to consider how the changes might apply to their existing arrangements;
- iii) Members should themselves interpret the spirit as well as the letter of the rules, mindful of their purpose which is to protect the reputation of the House and its Members generally;
- iv) it is wise too to seek early advice from the House authorities on the interpretation of those rules;
- v) it can be helpful to ask for that advice in writing, particularly when it has a material effect on Members' allowances and their personal financial arrangements;
- vi) where, for any reason, the Member has not had a reply or a satisfactory reply, it would be advisable to press the Department for a reply rather than to assume on their silence.

# Written evidence received by the Parliamentary Commissioner for Standards

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## 1. Article in the Sunday Telegraph, 3 February 2008

### MPs 'use allowance to dodge death tax'

A HUSBAND and wife MP couple have used £165,000 of Commons allowances to subsidise a home they already own and avoid death duties, it was claimed last night, writes Melissa Kite.

Sir Nicholas and Ann Winterton, both Conservative MPs, have been claiming money meant to help MPs keep a second home close to Parliament against a £700,000 property which was bought outright.

Using a loophole in Commons rules, they have been claiming more than £30,000 a year in expenses from the taxpayer after transferring the property in Westminster to a family trust set up for their two children and then renting it back.

The revelations come days after the Conservative MP Derek Conway was forced to stand down for employing his sons as paid aides while they were full-time students.

Last night, Sir Nicholas, who has previously described clampdowns on MPs' expenses as unfair, said: "I am not dishonest. We don't own the flat because once it is handed over it becomes the property of the beneficiaries of the trust. I see nothing unethical or wrong in it. It was agreed by the Commons Fees Office. I happen to rent a property that I bought outright."

According to tax experts, the arrangement, using the Commons Additional Costs Allowance (ACA), could also mean the Winterton children stand to save up to £280,000 in death duties. Because the MPs have transferred the property into a trust and are renting it back, they can avoid the 40 per cent tax bill.

Sir Nicholas, MP for Macclesfield, and Lady Winterton, MP for Congleton, also own a £600,000 farmhouse in Cheshire.

While Sir Nicholas insisted the arrangement was legal, the rules state: "The ACA must not be used to meet the cost of a mortgage or for leasing accommodation from: yourself; a business associate or any organisation or company in which you or a partner or family member have an interest."

*3 February 2008*

## 2. Article in the Mail on Sunday, 3 February 2008

### MPS USE EXPENSES TO DODGE DEATH TAX

A HUSBAND-and-wife MP couple have claimed £165,000 in Commons expenses for their £700,000 second home six years after they paid off their mortgage.

Tory politicians Sir Nicholas Winterton and his wife Ann switched their fashionable London apartment to a family trust and used their parliamentary allowances to avoid death duty.

Using a loophole in Commons rules, they claim more than £30,000 a year in 'rent' from the public purse which is paid to a family trust set up for their two children. The extraordinary-arrangement has allowed them to benefit in two ways.

Their family has obtained £165,826 in 'rent' for a home which they bought outright in 2002. And they stand to make a saving of up to £280,000 in their death-duty liability.

Sir Nicholas yesterday insisted he had done nothing wrong and that the 'rent' payment and the family trust deal had been approved by the Commons authorities.

However, he said it was drawn up before checks on handouts for MPs' second homes were tightened up—and would probably not be allowed if it had been put forward now.

'I am not dishonest. We don't own the flat because once it is handed over it becomes the property of the beneficiaries of the trust (his children).

'I see nothing unethical or wrong in it. It was agreed by the Commons Fees office—I happen to rent a property that I bought outright.'

Sir Nicholas explained that the couple paid off their mortgage on their apartment in [ ] Westminster, in 2002 with the proceeds of a legacy and an insurance savings policy.

The latest disclosures about MPs' expenses come only days after Conservative MP Derek Conway was forced to step down for employing his sons as paid Commons aides while they were full-time students.

The revelations concerning the Wintertons are bound to provoke a wider debate about inheritance tax as well as MPs' expenses.

The Conservatives' vote-winning pledge last October to raise the death-duty threshold to £1million forced Gordon Brown to call off a snap autumn Election.

As a result, the Prime Minister changed the existing threshold of £300,000 per person to £600,000 per couple.

Tax laws make it virtually impossible for most people to avoid death duty on their home—which is usually their biggest asset.

To do so, if they carry on living in the home, they must transfer ownership to their children and pay a full market rent.

For couples of retirement age and with little income—and certainly no expenses—it is generally unaffordable. That means their children can be saddled with a 40 per cent tax bill on the property when their parents die.

However, the Wintertons, who are both in their 60s, were able to use their Commons Additional Costs Allowance (ACA) to reduce the inheritance tax on their London home to nil.

The arrangement is designed to remove the house completely from their estate for death-duty purposes.

Based on its estimated value of £700,000, the Wintertons' grown-up children [ ] could save as much as £280,000 in inheritance tax.

Macclesfield MP Sir Nicholas and his wife, MP for Congleton, also own a £600,000 farmhouse in Cheshire, [ ], which has separate stables and borders their neighbouring constituencies.

Tax expert Maurice Fitzpatrick, of Grant Thornton accountants, said: 'It is very difficult for a typical homeowner to hand their property on to their children free of inheritance tax because of the restrictive way in which death duty legislation works.

'I'm sure that many people would wish to be able to do so, but generally the inheritance-tax rules prevent them from doing so.'

The Commons second home allowance was originally designed to allow MPs to have bases in their constituency and also close to Parliament.

But strict rules to avoid the ACA being abused say: 'You must avoid any arrangement which may give rise to an accusation that you are, or someone close to you is, obtaining an immediate benefit or subsidy from public funds.

‘The ACA must not be used to meet the costs of a mortgage or for leasing accommodation from: yourself; a close business associate or any organisation or company in which you—or a partner or family member—have an interest.’

MPs have to submit mortgage or rent bills to claim the money. The Wintertons would have been unable to do this when they paid off the mortgage on their Westminster home in February 2002.

They would have been restricted to claiming a modest sum to cover utility and other bills.

But they claim that by giving the home to a trust, they are no longer the owners and must pay a market rent to the trust regardless of the fact that they are two of the three trustees.

The third trustee is [ ], a lawyer who specialises in tax planning, trusts and estate planning for [ ] law firm of London and Birmingham.

Last night Sir Nicholas, 69, said: ‘My arrangements are entirely in accordance with the rules of the House. It is very simple. I pay rent to the trust. I am entitled to claim for the costs of living in London.’

He admitted the couple had spent some of the cash from the trust on kitchen and other repairs.

Land Registry documents dated August 1991 show that the couple owned the London home and had a £195,000 mortgage with the Cheshire Building Society.

They were paying £2,381 a month to service it.

Another Land Registry document, dated February 2002, shows that the property was transferred from the Wintertons to the trust for no money.

When The Mail on Sunday first approached Sir Nicholas as he emerged from his London home yesterday, he ran off to avoid answering questions.

Refusing to break stride, he said: ‘It’s very simple, I pay rent on the property.’

Asked to whom he was paying that rent, he replied: ‘To the trust. I am entitled to claim for the costs of living in London.’

Asked later in the day in his constituency if he had spent any of the money since the trust was set up in 2002, he said: ‘Yes, we have to meet the cost of council tax, utilities, new carpets and suchlike.’

‘The trust money can be spent on structural repairs to the flat—much like any landlord.’

‘The rent for the flat was set by an independent surveyor estate agent. It is the same that is paid by anyone else in the block.’

‘If we didn’t live in that flat we would be entitled to claim rent on somewhere else in London.’

‘We do not claim anything for our place here [in Cheshire], you know. What we are claiming in London is what we are entitled to.’

He added: ‘A lot of people claim more—I am in the bottom 40 of MPs who claim.’

Asked who were the end beneficiaries of the trust, Sir Nicholas replied: ‘That is private.’

Asked ‘Is it your children or is it you?’ he said: ‘It is not ourselves. That is all I am prepared to say.’

He claimed other MPs with second homes in London had made similar arrangements.

The third trustee of the couple’s London flat, [ ], confirmed that Sir Nicholas and Lady Winterton owned the property outright when they transferred it to the trust in 2002 after paying off their mortgage.

He maintained that the flat was now owned by the trust, not the Wintertons, which is why they paid rent to the trust.

When it was pointed out that the Wintertons were two of the three trustees (with [ ] the third), he said: ‘It is perfectly straightforward.

‘They no longer own the house. If you own a property there is nothing to stop you giving it away. They transferred it to a trust of which they are not the beneficiaries.’

He refused to say who the beneficiaries were.

[ ] added that the main purpose of setting up the trust was to enable the Wintertons to reduce their inheritance–tax liability so that they could hand over a bigger share of their wealth to their children.

When asked if the Wintertons had spent any of the trust money, [ ] said that as far as he knew, they had not.

Both the Commons authorities and the Conservative Party declined to comment.

*3 February 2008*

### **3. Letter to the Commissioner from Mr Gary Poole, 3 February 2008**

I am writing to you to request that you investigate the conduct of Lady Ann Winterton M.P. in respect of her claims (along with Sir Nicholas M.P.) of Additional Costs Allowance.

I am concerned that Lady Ann Winterton M.P. may have contravened Rules 3.3.2 and 3.3.3 of the Green Book (2006) rules and, by doing so, also broken Rules of Conduct 14 and 15 as specified in the Code of Conduct for Members of Parliament.

Evidence for my request for investigation is detailed below and is taken from the Mail on Sunday (3-2-08). I am cognisant of your guidance on considering complaints, which are based upon newspaper articles, or television broadcasts, however the facts collated by the Mail on Sunday are in far more detail that I could compile and are of such importance that I hope you will take this evidence as it stands.

Mail on Sunday 3-2-08

‘A husband–and–wife MP couple have claimed £165,000 in Commons expenses for their £700,000 second home six years after they paid off their mortgage. Tory politicians Sir Nicholas and Ann Winterton switched their fashionable London apartment to a family trust and used their parliamentary allowances to avoid death duty. Using a loophole in Commons rules, they claim more than £30,000 a year in “rent” from the public purse, which is paid to a family trust set up for their two children. The extraordinary arrangement has allowed them to benefit in two ways.

Their family has obtained £165,826 in “rent” for a home, which they bought outright in 2002. And they stand to make a saving of up to £280,000 in their death–duty liability.

Sir Nicholas yesterday insisted he had done nothing wrong and that the “rent” payment and the family trust deal had been approved by the Commons authorities. However, he said it was drawn up before checks on handouts for MPs’ second homes were tightened up—and would probably not be allowed if it had been put forward now. He said “I am not dishonest. We don’t own the flat, because once it is handed over, it becomes the property of the beneficiaries of the trust [his children].

“I see nothing unethical or wrong in it. It was agreed by the Commons Fees office—I happen to rent a property that I bought outright.”

Sir Nicholas explained that the couple paid off their mortgage on their apartment in [ ] Westminster, in 2002 with the proceeds of a legacy and an insurance savings policy.

The latest disclosures about MPs’ expenses come only days after Conservative MP Derek Conway was forced to step down for employing his sons as paid Commons aides while they were full–time students.

The revelations concerning the Wintertons are bound to provoke a wider debate about inheritance tax, as well as MPs' expenses.

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As a result, the prime Minister changed the existing threshold of £300,000 per person to £600,000 per couple.

Tax laws make it virtually impossible for most people to avoid death duty on their home—which is usually their biggest asset.

To do so, if they carry on living in the home, they must transfer ownership to their children and pay a full market rent.

For couples of retirement age and with little income—and certainly no expenses—it is generally unaffordable.

That means their children can be saddled with a 40 per cent tax bill on the property when their parents die.

However, the Wintertons, who are both in their 60s, were able to use their Commons Additional Costs Allowance (ACA) to reduce the inheritance tax on their London home to nil.

The arrangement is designed to remove the house completely from their estate for death-duty purposes.

Based on its estimated value of £700,000, the Wintertons' grown-up children, [ ], could save as much as £280,000 in inheritance tax.

Macclesfield MP Sir Nicholas and his wife, MP for Congleton, also own a £600,000 farmhouse in Cheshire, [ ], which has separate stables and borders their neighbouring constituencies.

Tax expert Maurice Fitzpatrick, of accountants Grant Thornton, said: "It is very difficult for a typical homeowner to hand their property on to their children free of inheritance tax because of the restrictive way in which death duty legislation works.

"I'm sure that many people would wish to be able to do so, but generally the inheritance-tax rules prevent them from doing so."

The Commons second-home allowance was originally designed to allow MPs to have bases in their constituency and also close to Parliament.

But strict rules to avoid the ACA being abused say: "You must avoid any arrangement which may give rise to an accusation that you are, or someone close to you is, obtaining an immediate benefit or subsidy from public funds.

"The ACA must not be used to meet the costs of a mortgage or for leasing accommodation from: yourself; a close business associate or any organisation or company in which you—or a partner—have an interest."

MPs have to submit mortgage or rent bills to claim the money. The Wintertons would have been unable to do this when they paid off the mortgage on their Westminster home in February 2002.

They would have been restricted to claiming a modest sum to cover utility and other bills.

But they claim that by giving the home to a trust, they are no longer the owners and must pay a market rent to the trust, regardless of the fact that they are two of the three trustees.

The third trustee is [ ], a lawyer who specialises in tax planning, trusts and estate planning for [ ] law firm of London and Birmingham.

Last night, Sir Nicholas, 69, said: "My arrangements are entirely in accordance with the rules of the House.

"It is very simple. I pay rent to the trust. I am entitled to claim for the costs of living in London."

He admitted the couple had spent some of the cash from the trust on kitchen and other repairs.

Land registry documents dated August 1991 show that the couple owned the London home and had a £195,000 mortgage with the Cheshire Building Society.

They were paying £2,381 a month to service it.

Another Land Registry document, dated February 2002, shows that the property was transferred from the Wintertons to the trust for no money.

When *The Mail on Sunday* first approached Sir Nicholas as he emerged from his London home yesterday, he ran off to avoid answering questions.

Refusing to break stride, he said: "It's very simple, I pay rent on the property."

Asked to whom he was paying that rent, he replied: "To the trust. I am entitled to claim for the costs of living in London."

Asked later in the day in his constituency if he had spent any of the money since the trust was set up in 2002, he said: "Yes, we have to meet the cost of council tax, utilities, new carpets and suchlike.

"The trust money can be spent on structural repairs to the flat—much like any landlord.

"The rent for the flat was set by an independent surveyor estate agent.

"It is the same that is paid by anyone else in the block.

"If we didn't live in the flat, we would be entitled to claim rent on somewhere else in London.

"We do not claim anything for our place here [in Cheshire], you know.

"What we are claiming in London is what we are entitled to."

He added: "A lot of people claim more—I am in the bottom 40 of MPs who claim."

Asked who were the end beneficiaries of the trust, Sir Nicholas replied: "That is private."

Asked "Is it your children or is it you?", he said: "It is not ourselves. That is all I am prepared to say."

He claimed other MPs with second homes in London had made similar arrangements.

The third trustee of the couple's London flat, [ ], confirmed that Sir Nicholas and Lady Winterton owned the property outright when they transferred it to the trust in 2002 after paying off their mortgage.

He maintained that the flat was now owned by the trust, not the Wintertons, which is why they paid rent to the trust.

When it was pointed out that the Wintertons were two of the three trustees (with [ ] the third), he said: "It is perfectly straightforward. They no longer own the house. "If you own a property, there is nothing to stop you giving it away." "They transferred it to a trust of which they are not the beneficiaries." He refused to say who the beneficiaries were. [ ] added that the main purpose of setting up the trust was to enable the Wintertons to reduce their inheritance-tax liability so that they could hand over a bigger share of their wealth to their children.

When asked if the Wintertons had spent any of the trust money, [ ] said that as far as he knew, they had not. Both the Commons authorities and the Conservative Party declined to comment.

*3 February 2008*

#### **4. Letter to the Commissioner from Mr Michael Barnbrook, 3 February 2008**

I wish to register a complaint against Sir Nicholas Winterton, MP and his wife Ann Winterton.

My complaint is based on a newspaper article in the Sunday Telegraph dated 3<sup>rd</sup> February, 2008 in which it states that they have been using a loophole in Commons rules by claiming more than £30,000 a year in expenses from the taxpayer after transferring their property in Westminster to a family trust set up for their two children and then renting it back from them.

The rules state “The ACA must not be used to meet the cost of a mortgage or for leasing accommodation from yourself, a business associate or any organisation or company in which you or a partner or family member have an interest.

It appears therefore, according to the newspaper report, that there has been a misappropriation of public funds.

If during the course of your investigation you find this to be the case, I am requesting that you refer the matter to the Economic and Specialist Crime Unit at New Scotland Yard for an independent assessment of the evidence for possible criminal conduct, in accordance with the precedent that exists between your two departments.

You are already aware of the precedent set by your predecessor, Sir Philip Mawer, in his investigations into the conduct of Michael Trend and Derek Conway, that as it is impossible for members of the public to supply evidence to back up a complaint in such cases, they not having access to the House of Commons Accounts Department, that he was prepared to instigate an investigation himself, solely on the basis of a newspaper report.

You are also aware of comments made by Sir Philip Mawer in his final report relating to his investigation into the conduct of Mr Clive Betts, MP, when he stated that the Committee on Standards and Privileges had given the Parliamentary Commissioner for Standards permission, in the future, to instigate an investigation into the conduct of any Member of Parliament on their own initiative, without having to wait for a complaint from a third party.

In conclusion I would refer you to paragraph 10 of the Code of Conduct and Guide to the Rules which state that a complainant should supply as much evidence as they can to support the complaint, not that they **MUST** supply any evidence before a preliminary inquiry can be started.

I look forward to your early response.

*3 February 2008*

#### **5. Letter to the Commissioner from Mr Michael Barnbrook, 10 February 2008**

With reference to your letter dated 6th February, 2008, informing me that you have decided not to use my letter of complaint dated 3rd February, 2008, as the basis for deciding whether to instigate at least a preliminary inquiry into the allegation made by me against Sir Nicholas Winterton, MP and his wife, Ann Winterton, MP.

Is it because the letter contains irrefutable evidence that Sir Nicholas and his wife have contravened the ACA rules by using £165,000 of taxpayer’s money to subsidise a home they already own.

As a retired Metropolitan Police Inspector I am somewhat bemused by the comment in your letter that you are considering whether any of the letters of complaint you have received so far, provide evidence sufficient to merit making at least a preliminary inquiry when, in the next paragraph you state that you are already considering evidence.

Why are you therefore considering any of the other letters, but not mine, when they are all based solely on newspaper articles and you are already in possession of evidence as stated by you in your letter?

I would suggest that you do not need any more evidence.

As can be seen from the newspaper article from the Sunday Telegraph, dated 3<sup>rd</sup> February, 2008, that I referred to in my original complaint, not the Mail on Sunday as stated by you in your letter to me, this is an open and shut case.

Sir Nicholas has admitted receiving the money, which is clearly in contravention of the ACA rules, which state and I quote, “The ACA must not be used to meet the cost of a mortgage or for leasing accommodation from yourself a business associate or any organisation or company in which you or your partner or family member have an interest”.

The fact that what Sir Nicholas has done may not be against the law and that the arrangement may have been agreed by the Commons Fees Office does not alter the fact that both he and his wife have received £165,000 of taxpayer’s money that they are not entitled to, as receipt of that money was in contravention of the ACA rules.

As someone who has informed me on numerous occasions when writing to me, that you must follow the rules, it is my considered opinion that you have no alternative other than to recommend to the Committee on Standards and Privileges that the money must be returned to the public purse.

Any other decision would amount to a misappropriation of public funds.

I consider that my original letter of complaint, which was from a different source of information to all the other letters you received and therefore might contain facts not quoted in the Mail on Sunday, in addition to the fact that my letter makes you aware of precedents and protocol that you should follow, details of which only you and I are aware of, should therefore be used as part of the evidence when you consider a preliminary inquiry.

I enclose a copy of the Sunday Telegraph article relating to my complaint, for your benefit.

I look forward to your early response.

*10 February 2008*

## **6. Letter to Sir Nicholas Winterton from the Commissioner, 14 February 2008 (identical letter sent to Lady Winterton)**

I would be grateful for your comments on complaints which I have received from Mr Gary Poole and Mr Michael Barnbrook about the claims you have made against the Additional Costs Allowance.

I attach a copy of Mr Poole’s and Mr Barnbrook’s letters of 3 February and Mr Barnbrook’s letter of 10 February which set out the grounds for their complaints.

In essence, the complaint is that the arrangements you made for meeting the costs of your overnight stays in London away from your main home were contrary to the guidance in the Green Book on Parliamentary Salaries, Allowances and Pensions, and in particular the provisions in Section 3 dealing with the Additional Costs Allowance.

As you know, the Code of Conduct for Members of Parliament provides as follows in paragraph 14:

“Members shall at all times ensure that their use of expenses, allowances, facilities and services provided from the public purse is strictly in accordance with the rules laid down on these matters, and that they observe any limits placed by the House on the use of such expenses, allowances, facilities and services.”

Section 3 of the Green Book makes provision for the Additional Costs Allowance. Section 3.1.1 sets out the scope of the allowance as follows:

“The additional costs allowance (ACA) reimburses Members of Parliament for expenses wholly, exclusively and necessarily incurred when staying overnight away from their main UK residence (referred to below as their main home) for the purpose of performing Parliamentary duties. **This excludes expenses that have been incurred for purely personal or political purposes.**”

Section 3.3 sets out the principles which apply. Paragraph 3.3.2 is as follows:

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

And paragraph 3.3.3 reads:

“ACA must not be used to meet the costs of a mortgage or for leasing accommodation from:

- yourself;
- a close business associate or any organisation or company in which you—or a partner or family member—have an interest; or
- a partner or family member.”

In the light of this, and these complaints I would be very grateful for your comments. It would be helpful if you could address the relevant provisions of the Code and the Green Book. I would be particularly grateful for your views on the application of paragraph 3.3.3 of the Green Book referred to above. In addition, it would be helpful to know:

- a) the sequence of events which led you to establish the arrangements for your overnight stays in London provided for under the Additional Costs Allowance;
- b) any advice you received from the House authorities either before or after instituting those arrangements;
- c) the size of the claims you have made in respect of your overnight stays in London under the Additional Costs Allowance.

I would, of course, welcome any other points you may wish to make.

I enclose a copy of the Note which sets out the procedure which I follow. I am writing to the complainants to let them know I am inviting you to comment on their complaint. If you would like to discuss any of this, please contact me at the above address or telephone me.

I am copying this letter and the complainants' letters to the Department of Resources for information at this stage in case I need to consult them once I have your response. I would be grateful for your help on this matter.

*14 February 2008*

## **7. Letter to the Commissioner from Lady Winterton, 18 March 2008**

I am responding on behalf of my husband, Nicholas, and myself to your recent letters following the complaints made against us by Mr Michael Barnbrook and, in my case, by Mr Gary Poole. Both complainants repeated extracts and information reported initially in an article in the Mail on Sunday published on 3rd February which were subsequently repeated elsewhere in other newspapers and media.

Mr Barnbrook is, I understand, a regular complainant whilst Mr Poole is the Labour Party candidate who has been selected to stand against me at the next general election in the constituency of Congleton. I would suggest, therefore, that both complaints are vexatious in nature and, in the case of Mr Poole, motivated entirely by party political opportunism.

I enclose for your information a copy of a statement made by Nicholas and myself on 4 February to ensure that the facts of the matter were put into the public domain. I know that the Director of Operations has been in touch with you and he has assured us that you fully understand the reasons why our response has been

delayed, although we would personally have preferred to have replied much sooner. It has been somewhat frustrating that, whilst we have taken the initiative and acted promptly throughout, the Department of Resources has been somewhat dilatory in confirming the details of our meetings and the conclusions reached.

You have requested information about the sequence of events which lead to us establishing the arrangements for overnight stays in London provided for under the Additional Costs Allowance. We have lived in the flat concerned since the early 1990s and were reimbursed initially by the Fees Office for mortgage interest payments. Subsequently, an insurance policy matured and Nicholas was the beneficiary of a modest legacy from an aunt which made us consider reducing our debt burden and paying off the mortgage.

Around the same time, we were advised by our accountants and solicitor about our position should one or both of us die, including the need to update our wills. Discussions took place about other relevant matters, one of which was our future inheritance tax liability. Shortly thereafter we took the decision to put the flat into a Trust (which eventually came into existence on 12 February 2002) but, before we went ahead, we contacted the Fees Office to ascertain whether the arrangement would be acceptable as we wished to continue to live at the flat. As we said in the Statement, we would not have proceeded if that permission had not been forthcoming.

We were re-elected at the general election in 2005 and the new guidelines were introduced in July 2006. As we had initially entered into an agreement with the Fees Office, we did not even consider that the new guidance could be applied retrospectively and believed that we had “grandparents’ rights”. The Fees Office wrote to us to make enquiries about the arrangement and I replied in February 2007 to give the information requested. We heard nothing further and naturally assumed that everything was in order and the Department continued to reimburse us throughout for the legitimate expenses for which we claimed. This seems to me to be further proof that the original contract remained in place.

It was a tremendous shock, therefore, to have details of the arrangements splashed all over the Mail on Sunday, although neither of us could understand how the figures used in the articles had been arrived at, which was the reason we included the actual figure for rent in our statement. It is the view of the majority of MPs that the information contained in the leaks could only have come from what is now the Department of Resources (previously the Department of Finance and Administration and formerly the Fees Office). We understand that an enquiry is now taking place and we will obviously be interested in its conclusions.

We have been placed in an impossible position with our names being dragged through the press in a most damaging and horrific way, with our integrity being challenged and yet without being able to counter this appalling, unjustified onslaught. We have acted entirely properly throughout in good faith and at all times have responded when asked for information. The present situation has been caused because the Department of Resources appears to have been infiltrated and because the Department failed to follow up its initial enquiry about the arrangement which had been originally agreed with the Fees Office. I understand that a letter had actually been drafted by the Department making further enquiries but was not sent. If it had, we would have replied promptly and co-operated by providing the appropriate information.

I trust that the Director of Operations will provide you with full details of the claims made over the years in respect of the flat, with particular reference to the rent paid to the Trust. I enclose copies of letters from him for your information.

We would be pleased to come and see you if you feel we could assist with any further queries.

*18 March 2008*

## **8. Statement by Sir Nicholas and Lady Winterton, 4 February 2008**

We would like to respond briefly to the articles in the Mail on Sunday and other media covering the flat we use in London. Like any other employment which requires people to work away from home, living expenses can be reclaimed from Parliament up to a prescribed limit. In the late 1990s, we took advice from our solicitor and accountants about our likely inheritance tax liability, as so many families do. As a result of the advice given to us, we paid off the mortgage on the flat with the proceeds of a small legacy and an insurance policy which had just matured.

We were further advised to put the flat into a Trust for which there are three Trustees (our solicitor and ourselves) who administer the Trust on behalf of the beneficiaries. We no longer own the flat and in order to meet the objectives and terms of the Trust, we are obliged to pay the full market rent which is recommended by an independent valuer/estate agent. The current rent is not £30,000 per annum as stated in the press articles but is in fact £21,600 per annum.

Before we proceeded, the arrangement was agreed by the Fees Office and we clearly would not have gone ahead unless this had been the case. If we did not use our present accommodation, we would have to rent or buy other accommodation (for which legitimate expenses could be claimed as now) and there is, therefore, no additional cost to the taxpayer from the present arrangement.

More often than not we travel together by car off peak saving both on mileage allowance and very substantially on the high cost of rail travel. It is also a fact that we are both in the lowest quartile as far as Parliamentary expenses are concerned and we seek to use the allowances available as prudently and responsibly as possible.

NB This statement, if used, should be printed in its entirety.

*4 February 2008*

## **9. Letter to Sir Nicholas and Lady Winterton from the Director of Operations, Department of Resources, 12 March 2008**

We have had a number of discussions, most recently on Thursday, 6 March, about the reimbursement of your housing costs through the Additional Costs Allowance (ACA). I promised to write to confirm the agreement we reached and to set out, for the record, the events that preceded this.

We first met some days after certain newspapers had published articles about your use of the ACA and, in particular, allegations that you were improperly claiming reimbursement for rent paid for a property which was held in trust for others in your family. The press further disclosed that you were both trustees in this arrangement, along with a solicitor. At our first meeting you explained that claiming ACA on your second home in the form of rent payable to a trust was agreed by previous holders of my post. You mentioned that you had had discussions with [Mr A] in the late 1990s and subsequently [Mr B]. You said that [Mr A] had indicated that paying a market rent, albeit under a family trust arrangement, was not against the rules set down by the House.

[Mr A] retired in 1998 to be succeeded by [Mr B]. I understand that the family trust was established in early 2002. The House's record management policies mean that, in general, payment records go back no more than the three financial years preceding the current year. Hence, we hold payment and other ACA data about your claims from April 2004 onwards.

A check of your files confirms that the Department does not hold any information or record of decisions reached between you and [Messrs A and B]. You explained that neither of you held any documentation which might confirm or shed further light on any exchange. You said to me that, in your experience, it is only in recent years that the Department's requirements have changed such that formal documentation is routinely requested and retained. I can confirm that during the time in question it was not unusual for oral advice to be offered by senior staff, which would then form the basis for an understanding between the House and individual Members.

The ACA rules themselves have evolved. The advice in early editions of the Green Book from 1987 until 2002 tended towards basic rules. Novel or complicated housing and ownership arrangements were not covered. Members were advised to seek guidance where necessary.

In June 2003 the Green Book had the following reference

“3.12.1 The following expenditure is not allowable:...

The costs of leasing accommodation from yourself.”

It is an arguable point whether this new form of words might have led either you or senior staff here to revisit the arrangement that had been agreed previously. The strict technical position was, perhaps, that you were not 'leasing accommodation from yourself'. Nevertheless, it is the case that a further look at the matter does not seem to have taken place within the Department at this time. Nor was such a review prompted by you.

The next significant change to the Green Book was in July 2006 when the following new text was incorporated:

### 3.3.1 Principles

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

### 3.3.2

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

The purpose of this new formulation in the Green Book is, in my view, clear. Moreover, the Department is empowered to interpret the rules in the Green Book by the Speaker. Your trust arrangement, in my opinion, contravenes paragraph 3.3.2 in that someone close to you (one or more members of your family as beneficiaries of the trust) is obtaining an immediate benefit from public funds in the form of rental income paid from the ACA. This means that the House cannot continue into the future to meet your rental payments for [ ] as it does now.

In our discussions you made the following points:

- i) that the current arrangement (i.e. claiming for rental payments made to a family trust) was within the ACA rules at the time it was entered into;
- ii) that you took advice from senior staff in the Department at the time and were assured that the arrangement was acceptable to the House;
- iii) that the 2006 rules are themselves difficult to interpret against a somewhat complex legal agreement already entered into (in fact, you argued that the rules are less than legally watertight);
- iv) that changing the rules during the life of Parliament and expecting Members to abandon longstanding personal arrangements was unreasonable; and
- v) that market conditions meant that any new arrangement is unlikely to result in a saving to the taxpayer.

I have no reason to believe that throughout the period you have acted other than properly. I fully accept that you have not attempted to conceal the arrangement at any stage. Indeed, in February 2007 Lady Winterton wrote to the Department drawing our attention to the trust arrangement. I regret that through administrative error a reply to Lady Winterton was prepared by a senior member of staff but never sent. Had this letter been issued, matters might not have developed in quite the way in which they have.

Notwithstanding the background to the current position, as we have discussed, the House cannot agree to your current housing arrangements continuing for the remainder of this Parliament. The rules in the Green Book are clear on this point. We also discussed the fact that making alternative housing arrangements in London against your busy Parliamentary and constituency schedules is not a simple matter. So, last week I proposed that within twelve months the current reimbursement of rent for [ ] must come to an end. You agreed to this proposal. This means that by the end of February 2009 you will have made alternative accommodation arrangements in London for which you would be eligible to claim reimbursement from ACA. Alternatively, if you choose not to move home, the House would not meet rental payments for [ ] from March 2009 onwards.

I would be grateful if you would confirm that the conclusions set out above are the basis on which we agreed to move ahead on this matter. I look forward to hearing from you.

*12 March 2008*

### **10. Letter to Lady Winterton from the Director of Operations, Department of Resources, 18 March 2008**

Thank you for your letter of 13 March in reply to mine of 12 March. I know too that Sir Nicholas had a further discussion with the Clerk of the House and as a result the Clerk has asked me to clarify the position.

First, I can confirm that the current arrangement in respect of [ ] can remain until 31 March 2009. I recall that when we last met we agreed that it would be appropriate for you and Sir Nicholas to change your current housing arrangements and that you said it was your intention shortly to begin a search to find similar alternative accommodation. I accept that there was a minor misunderstanding between us about the end date, which is now resolved. Any alternative accommodation would, of course, be eligible for reimbursement from the ACA, subject to the normal rules in the Green Book.

Secondly, my letter drew your attention to the ACA provisions of June 2003 so that the full position was clear to you in any further correspondence that might ensue on this matter. I acknowledge that it was with the further 2006 revisions that the position was substantially clarified in respect of your circumstances.

I hope that, as you suggested, we can now move forward and that a further meeting is not required. I look forward to hearing from you.

I am copying this letter to Sir Nicholas and [the Clerk and Chief Executive of the House of Commons].

*18 March 2008*

### **11. Letter to the Director of Operations, Department of Resources, from Lady Winterton, 18 March 2008**

I am writing to confirm that Nicholas and I have read your letter of today's date in connection with the Additional Costs Allowance. We are grateful for the further clarification provided and consider that recent discussions have led to a satisfactory conclusion which we accept. There will, therefore, be no need for further meetings.

*18 March 2008*

### **12. Letter to the Director of Operations, Department of Resources, from the Commissioner, 19 March 2008**

I would be grateful for your comments on a complaint I have received against Sir Nicholas Winterton and Lady Winterton in respect of the claims they have made against the Additional Costs Allowance for renting accommodation in London.

I sent you copies of the letters from the complainants with a copy of my letters to both Sir Nicholas and Lady Winterton of 14 February. I enclose further copies of those letters, together with a copy of a letter of 18 March from Lady Winterton with a response from her, on behalf of both her and Sir Nicholas.

In letting me have your comments, I would be grateful for your advice on the application of the Green Book to the arrangements both in February 2002 when Sir Nicholas and Lady Winterton established their Trust, in June 2003 when the formulation was changed, and again in July 2006 when the new guidelines were issued. I have noted what you said to Lady Winterton in your letter to her of 12 March which she annexed to her letter to me. I would be grateful if you could also address the applicability, in your view, of section 3.3.3 of the July 2006 Green Book.

I would be grateful too if you could let me have your comments on the suggestion from Lady Winterton that changes to the Green Book might not apply retrospectively. And I would welcome your comments on the exchanges with Lady Winterton around February 2007, including copies of the correspondence and, if it is available, the draft letter which appears not to have been sent.

Finally, it would be helpful to know whether the department has any means of identifying whether a rent for which a claim is made is a fair market rent and whether you can advise me – or direct me to a source of advice – on how long it would normally take to disengage from a renting arrangement in the sort of circumstances which Sir Nicholas and Lady Winterton are placed, and how long it would normally take to find alternative accommodation.

I would be very grateful with your help on this.

*19 March 2008*

### **13. Letter to the Commissioner from the Director of Operations, Department of Resources, 18 April 2008**

Thank you for your letter of 19 March 2008 about the above complaint. You attached a copy of a reply you received from Lady Winterton (and on behalf of Sir Nicholas) which included as attachments my letters dated 12 March and 18 March. You asked for my comments on a number of matters.

First, I would draw your attention to the 12 March letter, which covers the evolving nature of the rules and guidance in the Green Book. The ACA rules and guidance have changed for a number of reasons including the House authorities' desire to have tighter controls in place following the inquiry into the case of Mr Michael Trend; the increasing propensity for Members to purchase a property using the ACA, rather than renting or using hotels; and the complex arrangements that we see that reflect the complicated nature of both the financial products now available and, on occasions, the personal circumstances of Members.

Paragraphs 5-8 of my letter make it clear that in 2002 the Green Book was silent on the matters relevant to Sir Nicholas and Lady Winterton. In 2003 the position changed somewhat as set out and changed again in July 2006 in the most recent edition of the Green Book. As I said in my letter, I have no doubt that as of July 2006 Sir Nicholas and Lady Winterton's arrangements fell foul of the rules. Moreover, I think it likely that, as you seem to imply, the arrangement did not meet the requirements of paragraph 3.3.3 as well as paragraph 3.3.2 as pointed out in my letter.

The Department is empowered by the Speaker to interpret the Green Book (see the Speaker's Introduction). It is this authority which is relevant, although you should be aware that the House legal advisers have suggested there is an element of doubt as to whether the wording of paragraph 3.3.2 encompasses the Wintertons' trust arrangements.

The House authorities have never intended for the Green Book to be a legal text, nor could the Green Book ever anticipate the variety of circumstances that might arise.

This Department's interpretation is that the trust arrangement described by Lady Winterton was an arrangement whereby someone close to her and her husband obtained an immediate benefit from public funds. In this sense, I consider that the trust arrangement is outside both the letter and spirit of the rules. I would also agree with the implication of your letter that in this case ACA was used for leasing accommodation from a family member.

You have also asked about the retrospective nature of any rule change, as mentioned by Lady Winterton. The position is relatively straightforward. The Department would rarely, if ever, seek to recover money or goods for past payments which were acceptable at the time but had subsequently become ineligible expenditure. We would, however, expect Members to meet new rules prospectively.

In cases such as this, we generally allow a period of time for Members to make new arrangements, recognising that there may be contractual agreements to be honoured and that sometimes personal circumstances do not allow an immediate clean break to be made. We treat each case on its merits. The Department has no formal or informal rule which enshrines 'grandparents' rights', by which I take Lady Winterton to mean that an

existing arrangement should be allowed to continue undisturbed as it had been entered into at a time when it met the rules. In other words, this is not a practice generally applied by the Department and it would not, in my view, be appropriate here.

I attach a copy of Lady Winterton's February 2007 letter and the draft reply prepared by the Department. We took preliminary legal advice about the position and the draft letter was a simple request for more information. It is a matter of some regret that this was not sent, which was an administrative error.

We do not routinely check whether any rental paid through the ACA is a fair market rent. The underlying assumption being that these will always be commercial arrangements on commercial terms. A minority of Members rent a London property; and average rental payments by Members are about £1,300 per month. Sir Nicholas and Lady Winterton were each paying some £900 per month in rent, below the individual average.

I would expect most Members who rent a property to have notice periods in their rental agreements of one month or more. Of those that we hold I am advised that up to six months is not unusual. The time necessary to find suitable alternative accommodation would to some extent depend on the time available to Sir Nicholas and Lady Winterton in between their busy parliamentary schedules.

Please let me know if you need any further information.

*18 April 2008*

#### **14. Letter to Lady Winterton from a Validation Officer, Department of Finance and Administration, 9 February 2007**

I refer to your lease of [ ] the rent of which you charge against the above allowance.

I note that the tenancy agreement states that you are both the landlord and the tenant. I should be grateful if you would confirm if this is correct as I must inform you that you may not claim the costs of leasing accommodation from yourselves; or a partner or family member. These rules are set out on page 11 of the Green Book (section 3.3.3).

I should be grateful if you would contact me as soon as possible to clarify the position. This will help to avoid delays in the processing of future claims.

*9 February 2007*

#### **15. Letter to a Validation Officer, Department of Finance and Administration from Lady Winterton, 11 February 2007**

I write in response to your letters dated 9th February addressed to my husband, Sir Nicholas Winterton MP, and myself.

Our current accommodation arrangements in London have been in place for five years and were agreed by the Fees Office at the time. The lease of [ ] is owned by a Trust and the monthly rent which we pay is a full commercial market rent assessed and recommended by an independent firm of surveyors and estate agents.

*11 February 2007*

#### **16. Letter to Lady Winterton from the Commissioner, 23 April 2008**

I wrote to you on 19 March following your letter to me the previous day about this complaint against yourself and Sir Nicholas in respect of your claim from the Additional Costs Allowance for your London flat.

I said then that I would be consulting the Department of Resources. I have now done so. I attach a copy of their letter to me of 18 April with its attachments, setting out their views. I attach also a copy of my letter of 19 March which sets out the issues on which I particularly asked for their assistance.

As you will see, the Director of Operations considers that, as of July 2006, the arrangements you had put in place in respect of your London flat fell foul of the rules in relation to claims under the Additional Costs Allowance. The letter refers also to the issue of retrospection and “grandparents’ rights”, the level of rent payable and the timescale in which the payment of the ACA in respect of this flat would come to an end.

It would be helpful to know whether you and Sir Nicholas accept that you were in breach of the rules as established in July 2006. It would be helpful too to know whether either of you reviewed the position when the Green Book changed in June 2003, and, if so, the reasons why you believed that the arrangements you have in place did not fall foul of the new rules.

I note that your letter of 11 February 2007 to the DFA refers to the market rent being that assessed and recommended by an independent firm of surveyors and estate agents. It would be very helpful if you could let me have a copy of that assessment. I would be grateful to know whether you are now making alternative arrangements for your accommodation in London and whether you think it would be desirable, and possible, for you to make the necessary changes before the date suggested by the Department of Resources, namely February 2009.

Finally, I think it would be helpful for me either to see the trust deed relating to the London flat or to have a summary of how it operates in terms of controlling decisions, including about the level and receipt of rental income, and who are the beneficiaries.

I am copying this letter to Sir Nicholas and would be very grateful for the help of both of you in my consideration of this complaint.

*23 April 2008*

## **17. Letter to the Commissioner from Lady Winterton, 28 April 2008**

My husband, Nicholas, and I have both received your letter dated 23rd April and enclosures in connection with the complaints made by Mr Gary Poole and Mr Michael Barnbrook about the arrangements for our London accommodation.

We are disappointed that you have not been able to bring the matter to a close following the meetings which we had at our request and initiative with both [the Director of Operations, Department of Resources] and with [the Clerk and Chief Executive of the House of Commons] following the media coverage initiated by the Mail on Sunday resulting in it would appear most likely from a leak from the Department of Resources.

In the exchange of correspondence with [the Director of Operations] he states in his letter to Nicholas and myself (letter dated 12 March 2008) “I can confirm that during the time in question” (that is when we first consulted the Fees Office and subsequently set up the Trust, and for some time thereafter) “it was not unusual for oral advice to be offered by senior staff which would then form the basis for an understanding between the House and individual members”.

In the same letter he states “I have no reason to believe that throughout the period you have acted other than properly. I fully accept that you have not attempted to conceal the arrangement at any stage. Indeed in February 2007 Lady Winterton wrote to the Department drawing our attention to the Trust arrangement. I regret that through an administrative error a reply prepared by a senior member of staff was not sent. Had this letter been issued matters might not have developed in quite the way in which they have”.

As my husband and I had not heard anything from the Fees Office since 9 February 2007, we naturally assumed that the original arrangement remained acceptable. Having agreed an arrangement in the late 1990s prior to the establishment of the Trust, neither my husband nor I felt it necessary at any stage to consult the Green Book to which you refer, believing that an agreed arrangement was a contract only terminated with notice by one or both parties.

Following a number of separate meetings with [the Director of Resources] and [the Clerk and Chief Executive of the House of Commons], we volunteered to end the current arrangement on or before 31st March 2009 in order not to cause embarrassment or difficulty for the Fees Office or the House of Commons. The House

authorities have accepted this proposal which means that the Department of Resources will not fund the rent for [ ] after 31st March 2009.

My husband and I have already commenced looking for an alternative property with similar facilities in the Westminster area. As I am currently chairing the Local Transport Bill Public Bill Committee and Nicholas is the lead Chairman on the Finance Bill Public Bill Committee and, in addition, we shall be attending the inauguration of the new Taiwanese President in Taipei in May, I am sure you can appreciate the limits on our time. This sort of programme is not untypical and there is always a full diary of constituency engagements for us in Cheshire every weekend and during Recesses.

The market rent for the property was assessed and recommended by [ ] which has an office in [ ], Westminster and I submit copies of its letters on the matter dated 30th November 2005 and 21st February 2008. I note with interest in [the Director of Resources'] letter to you that the amount which my husband and I each pay is below the individual average for MPs. I stress the fact that the arrangement we have had since the beginning of 2002 has not cost the taxpayer any additional money, rather it has cost the taxpayer less. When we vacate the flat it will immediately be re-let by the Trustees at the current market rent, as now. We will rent another flat for which we will claim the cost of the rent from the Additional Costs Allowance.

There are three Trustees, Nicholas, myself and [ ] (solicitor) of [ ] who administer the Trust and ensure the rent is a current open market rent recommended by an independent company specialising in this field. The Trustees are also responsible for ensuring the appropriate internal maintenance and decoration of the flat; in short representing the interests of the beneficiaries who are our two sons and daughter as stated in the Trust Deed and on the HM Land Registry TRI form. We have ourselves personally funded over the years some improvements and refurbishments to the flat and provided furniture at our own expense.

I trust this information will enable you to complete your consideration of the complaints.

*28 April 2008*

## Appendix 2: Letter to the Clerk of the Committee from Lady Winterton, 12 June 2008

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Thank you for your letter of 10<sup>th</sup> June written in identical terms to my husband, Nicholas, and myself; I am replying on behalf of us both. We have read the report prepared by the Parliamentary Commissioner for Standards on the complaints made against us by Mr Gary Poole and Mr Michael Barnbrook and concur with the factual evidence. We do not believe that it is necessary for us to ask to give oral evidence but we would be more than happy to do so if the Committee decided that it would be helpful.

The only comment we would wish to make is that the Commissioner appears not to have share equitably the responsibility for what has occurred between the Department of Resources (formerly the Fees Office) and ourselves. We believe the tenor of the report places the onus disproportionately on us compared to the Department; we are perfectly agreeable to share the responsibility but feel that we have not received fair treatment in this regard. Whereas once the Department provided an exemplary service to MPs, this appears no longer to be the case and perhaps we have been let down by our expectation that it still existed.

## Formal minutes

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**Tuesday 17 June 2008**

Members present:

Sir George Young, in the Chair

Mr David Curry	Mr Chris Mullin
Mr Andrew Dismore	The Hon Nicholas Soames
Nick Harvey	Mr Paddy Tipping
Mr Elfyn Llwyd	Dr Alan Whitehead

Draft Report [Conduct of Sir Nicholas and Lady Winterton], proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 4 read and agreed to.

Paragraphs 5 to 8 read, amended and agreed to.

Paragraph 9 read and agreed to.

Paragraph 10 read, amended and agreed to.

Paragraphs 11 to 15 read and agreed to.

Paragraph 16 read, amended and agreed to.

Paragraph 17 read and agreed to.

Paragraphs 18 to 20 read, amended and agreed to.

Paragraph 21 read and agreed to.

Several Papers were ordered to be appended to the Report.

Resolved, That the Report, as amended, and Appendices be the Twelfth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

[Adjourned till Tuesday 1 July at 9.30 am

# Reports from the Committee on Standards and Privileges in the current Parliament

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## Session 2007-08

First Report	Conduct of Mr Elfyn Llwyd, Mr Adam Price and Mr Hywel Williams	HC 94
Second Report	Conduct of Mr Norman Baker, Mr Malcolm Bruce and Mr Sadiq Khan	HC 182
Third Report	Publications funded from the Communications Allowance	HC 232
Fourth Report	Conduct of Mr Derek Conway	HC 280
Fifth Report	Conduct of Mr Peter Hain	HC 324
Sixth Report	Employment of family members through the Staffing Allowance: Proposals for consultation	HC 383
Seventh Report	Employment of family members through the Staffing Allowance	HC 436
Eighth Report	The Complaints System and the Criminal Law	HC 523
Ninth Report	Conduct of Mr Speaker	HC 559
Tenth Report	Conduct of Mr George Osborne	HC 560
Eleventh Report	Conduct of Sir Robert Smith	HC 646
Twelfth Report	Conduct of Sir Nicholas and Lady Winterton	HC 744

## Session 2006-07

First Report	Evidence to the SSRB Review of Parliamentary pay, pensions and allowances	HC 330
Second Report	Conduct of Mr David Cameron	HC 429
Third Report	Complaints about alleged misuse of Parliamentary dining facilities	HC 431
Fourth Report	Conduct of Mr Julian Brazier	HC 682
Fifth Report	Handling of future complaints on misuse of the private dining facilities	HC 683
Sixth Report	Conduct of Mr George Galloway	HC 909
Seventh Report	Conduct of Mr Gregory Campbell	HC 992
Eighth Report	Conduct of Mr Martin Salter and Mr Rob Wilson	HC 1071

## Session 2005-06

First Report	Conduct of Mr Jonathan Sayeed	HC 419
Second Report	Conduct of Mr John Horam	HC 420
Third Report	Conduct of Mr Tony Baldry	HC 421
Fourth Report	Pay for Standing Committee Chairmen	HC 568
Fifth Report	Electoral Administration Bill: Simplification of Reporting Requirements	HC 807

Sixth Report	Mr Stephen Byers (Matter referred on 19 October 2005)	HC 854
Seventh Report	Conduct of Mr George Galloway	HC 1067
Eighth Report	Conduct of Mr Mark Lancaster	HC 1144
Ninth Report	Lobbying and All Party Groups	HC 1145
Tenth Report	Conduct of Mr Michael Foster (Worcester)	HC 1223
Eleventh Report	Conduct of Ms Emily Thornberry	HC 1367
Twelfth Report	Conduct of Nadine Dorries	HC 1368
Thirteenth Report	Conduct of Mr John Prescott	HC 1553
Fourteenth Report	Conduct of Dr Desmond Turner	HC 1578
Fifteenth Report	Conduct of Mr Eric Illsley	HC 1579
Sixteenth Report	Review of the Guide to the Rules Relating to the Conduct of Members: Consultation Document	HC 1580