

Ms Kitty Ussher MP: Resolution Letter

Letter to Mr Darren Reynolds from the Commissioner, 7 May 2009

I have now concluded my consideration of the complaint you sent me with your letter of 17 February about the use of the Communications Allowance by Ms Kitty Ussher MP to fund a letter and survey to her constituents.

In essence, the complaint which I accepted from you was that Ms Ussher used the Communications Allowance to fund a letter and survey to her constituents whose content breached the rules in relation to that allowance.

I have consulted Ms Ussher and the House authorities about this matter.

Ms Ussher readily accepts that the survey form and the letter should have carried an imprint stating that they were funded from the Communications Allowance. It was, in Ms Ussher's words, a regrettable oversight.

She has now written again to the same group of people to update them on the situation with Burnley General Hospital and has included a note stating that the previous letter was paid for from the Communications Allowance. I consider that to be a satisfactory outcome to that aspect of the matter.

Ms Ussher also accepts that the reference in the data protection statement on the survey to the Labour party contacting constituents was an error. She had asked for the data protection disclaimer to be included but she did not check that it was the correct one. She has sincerely apologised and will avoid a recurrence in future.

In respect of the content of the letter and survey, having taken the advice of the House authorities, I have concluded that the content of Ms Ussher's letter and of her survey did not breach the rules in relation to funding from the Communications Allowance. This is because, following a debate in the House on 3 July last year, the House decided that surveys may ask questions on national or international issues, but data from local surveys must not be transferred to national campaigns or used for local party campaigning. There is no evidence that Ms Ussher's survey was other than in accordance with these provisions. Ms Ussher has told me that the questions were unconnected with any national political campaigning. They were intended to identify issues which her constituents would like her to take up with national government. I appreciate how on reading the rules as drafted, you considered that the content of the survey was not within the rules, but I accept that Ms Ussher has acted fully within the terms of the amendment agreed by the House.

I do not, therefore, uphold your complaint in respect of the content of Ms Ussher's survey and newsletter, for the reasons I have given. I have, however, found that Ms Ussher was in breach of the rules in respect of the Communications Allowance on two technical issues—the lack of a funding imprint and the data protection statement. She has apologised unreservedly for both errors and taken appropriate action on them. I consider this is a satisfactory conclusion to this inquiry and I now regard the matter as closed. I will report the outcome briefly to the Committee on Standards and Privileges.

I am copying this letter to Ms Kitty Ussher MP.

7 May 2009

Ms Kitty Ussher MP: Written Evidence

1. Letter to the Commissioner from Mr Darren Reynolds, 17 February 2009

1. I am writing to complain about the use of the Communications Allowance and Incidental Expense Provision by Kitty Ussher MP (Burnley)
2. The following documents are enclosed which relate to this complaint:

[Material not relevant to the complaint accepted]

- i. A copy of a letter and survey sent to [name and address of constituent]

[Material not relevant to the complaint accepted]

- ii. A

Complaint regarding the Communications Allowance in respect of letter to [a constituent]

3. The letter to [a constituent] was according to Ms Ussher's office sent out using the Communications Allowance. The mailing [the constituent] received consisted only of this letter and the attached survey, there is no indication on either that the Communications allowance was used to fund this mailing.
4. The rules relating to the Communications Allowance state:
5. "You must include a short notice explaining that costs are to be met from the allowances and giving the source of any other funding" (para 18).
6. Additionally question 2 of the survey contravenes the rules regarding the Communications Allowance which state:

"The following generalised questions would not be acceptable:

What issues concern you most?

Health

Unemployment

Europe

Education

Crime" (para 27)

7. Furthermore there is a clear intention to use the information obtained for party political advantage as the "Data Protection permission text" clearly states "I or the Labour Party may contact you using the details you supply".
8. Taken together, these three points make this mailing in clear breach of the rules governing the use of the Communications Allowance.

[Material not relevant to the accepted complaint]

17 February 2002

2. Letter sent to a constituent by Ms Kitty Ussher MP, January 2009

Dear Friend,

I'm writing to update you on some of the work I've been doing as your MP. I'd also like to ask you what you'd like me to campaign for in your local area.

Meet the boss of Burnley General Hospital — Sion Baptist Church, Church Street, Burnley on Friday 6th March at 5.30pm

I was very concerned by some of the changes to A&E in Burnley and I organised a 10,000 strong petition and a special meeting with the Secretary of State for Health.

We now have a new chief executive to run the Burnley and Blackburn hospitals, a lady called Marie Burnham. On your behalf, I recently challenged her to sort our hospital by the end of this year.

I want to see our promised new maternity unit up and running, an end to boarded up buildings and piles of rubble on the site, faster access for ambulances to the new emergency department in Blackburn, better transport between the two sites and clear improvements in staff morale. want to see the facts. Not just about how many urgent cases are still being seen at Burnley General but also about whether the changes to A&E overall is delivering the promise of saving more lives.

I'm bringing Mrs Burnham to a meeting of Burnley residents so we can put our demands to her. This will be held on Friday 6 March at 5.30pm at Sion Baptist Church, Church Street. hope you'll be able to come along.

Beat the credit crunch

My office has produced information on money-saving tips. Find out how you can save on fuel costs and where to go for advice and support if you've been affected by the credit crunch. Please get in touch if you'd find this helpful.

And if you have chance, please fill in the enclosed form about what you'd like me to sort out in your local area. I promise to personally read all the responses I get and I look forward to hearing from you.

January 2009



Kitty Ussher MP's Constituency Survey

Have Your Say

Thanks very much for taking the time to complete this quick survey. It will help me make sure I am fighting for the changes that you want to see.

There are three questions, asking for your personal top priority for action in (1) Burnley as a whole (2) nationally and (3) in your street or local area.

Please give some thought to this brief list of my priorities for the future, and choose your top priority in each category and then use the space provided for any additional comments:

What's your top priority...

1. ...FOR ACTION IN BURNLEY?

Please tick one box only, to indicate your personal top priority

- | | | | |
|------------------------------|--------------------------|---------------------------------|--------------------------|
| Better housing | <input type="checkbox"/> | Sort out the hospital | <input type="checkbox"/> |
| Litter, recycling and waste | <input type="checkbox"/> | Crime and anti-social behaviour | <input type="checkbox"/> |
| More and better jobs | <input type="checkbox"/> | Faster transport to Manchester | <input type="checkbox"/> |
| Better schools and childcare | <input type="checkbox"/> | Other (please state) | <input type="checkbox"/> |

2. ...FOR NATIONAL GOVERNMENT ACTION?

Please tick one box only, to indicate your personal top priority

- | | | | |
|----------------------------|--------------------------|----------------|--------------------------|
| Economy | <input type="checkbox"/> | Immigration | <input type="checkbox"/> |
| Education | <input type="checkbox"/> | Transport | <input type="checkbox"/> |
| International Development | <input type="checkbox"/> | Foreign issues | <input type="checkbox"/> |
| Health | <input type="checkbox"/> | Crime | <input type="checkbox"/> |
| Other (please state) _____ | | | |

3. ...THAT NEEDS SORTING IN YOUR STREET OR LOCAL AREA?

Please state

Telephone number:	<input type="text"/>
Title:	<input type="text"/>
First name:	<input type="text"/>
Surname:	<input type="text"/>
Address:	<input type="text"/>
	<input type="text"/>
Postcode:	<input type="text"/>
Email address:	<input type="text"/>

3. Letter to Ms Kitty Ussher MP from the Commissioner, 24 February 2009

I would welcome your assistance on a complaint I have received from Darren Reynolds in respect of your use of the Communications Allowance to send a letter and survey to your constituents.

I attach a copy of the complainant's letter of 17 February together with the enclosures to that letter. Having carefully considered the evidence provided by the complainant, I decided that there was not sufficient evidence of a breach of the rules in respect of your Winter Report, and I am not instituting an inquiry into that matter.

In respect of the complaint about your website, I have asked the complainant initially to make any complaint to the Director-General of Resources as provided under the rules. If, however, the complainant is dissatisfied with the outcome and continues to believe that the articles complained of are still on the website in breach of the rules of the House, I have told him that it would remain open to him subsequently to send me a further complaint on this matter.

I have also told the complainant that I do not consider that I have evidence to suggest that the meeting you are planning for Friday 6 March is a party political event, and therefore the question of using the Communications Allowance to invite people to the meeting, or to collect information which might be deployed at that meeting, does not arise.

I have, however, accepted the complaint about your letter of January 2009 to [a constituent], together with the survey which is attached to it. In essence the complaint is that you used the Communications Allowance to fund a letter and survey to your constituents whose content breached the rules in relation to that allowance.

The Code of Conduct for Members of Parliament provides:

"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."

The rules of the House in respect of the Communications Allowance are set out in a booklet published in April 2007 entitled *"The Communications Allowance and the use of House stationery"*. Appendix 1 to the rules provides a new Section 6 of the Green Book. Paragraph 6.3.1 sets out the spend which may be met from the Communications Allowance. The allowable expenditure includes:

- *Regular reports to constituents*
- ...
- *Questionnaires and surveys*
- ...
- *Targeted communications*

Paragraph 6.14.1 gives examples of expenditure allowable under the Communications Allowance, including:

- *"Targeted correspondence relating to issues of importance locally, including*
 - Contact with local groupings*
 - Circulars*
 - Questionnaires or surveys*
 - Petitions"*

Paragraph 6.15.1 gives examples of expenditure not allowable under the Communications Allowance, including:

- *"Petitions, surveys or questionnaires associated with national political campaigning or local elections."*

Appendix 2 gives further rules and guidance. Paragraph 7 of that Appendix sets out one of the principles relating to the Allowance as follows:

"No party political or campaigning material is allowable in any part of a publication funded, wholly or in part from the allowance."

Paragraph 18 provides:

"Your publication must include a short notice explaining that costs are to be met from the allowances, and giving the source of any other funding."

Paragraphs 26 and 27 refer to the "Content of Newsletters etc" and provide as follows:

"26. Gauging public opinion on local issues is allowable. But surveys that seek opinions and views purely on national and international matters are unlikely to be acceptable.

The following questions would therefore be acceptable:

"What are your views on the A bypass?"*

"What is your experience of treatment received at xxxxxx hospital?"

27. The following generalised questions would not be acceptable

What issues concern you most?

- *Health*
- *Unemployment*
- *Europe*
- *Education*
- *Crime."*

I would welcome your comments on the complaint about the letter and survey you sent to [the constituent], taking account of this summary of the rules. In particular, it would be helpful to know:

1. whether you consider that the letter and survey were within the rules of the House for the use of the Communications Allowance;
2. whether you consider that the second section in your constituency survey (for National Government Action) was within the rules of the House;
3. why you included a reference to the Labour Party using constituents' contact details in the footnote to the survey;
4. whether the costs of the paper, printing and distribution of this letter and survey and the Freepost for the return of the survey, were fully met from the Communications Allowance, how many copies of the letter and survey were sent out and what were the costs claimed from the Communications Allowance for this dispatch;
5. how many similar letters and surveys you have sent out in the last twelve months;
6. whether you had any discussions with the House authorities about this letter and survey before they were dispatched.

Any other points you wish to make would, of course, be very welcome.

I enclose a note out which sets out the procedure I follow in considering complaints. I have written to the complainant to let him know that I have accepted this complaint but not the others included in his letter, and that I have written to you about it. It would be very helpful if you could let me have a response to this letter within the next three weeks. If there is any difficulty about this, or you would like to discuss any of this further, please contact me at the House.

I would be very grateful for your help on this matter.

24 February 2009

4. Letter to the Commissioner from Ms Kitty Ussher MP, 13 March 2009

Thank you for your letter of 24 February 2009 relating to a complaint from Mr Darren Reynolds.

Thank you also for your list of questions on page three of your letter, which I am happy to be able to answer in turn.

1. I do consider the letter and survey to be within the rules of the House for the use of the Communications Allowance, with one exception. It should have been clearly stated on both the survey form and the letter that both were paid for from the Communications Allowance. This was a regrettable oversight, due to the fact that we had not got used to thinking of mail merge letters as “publications” within the meaning of the new rules notably paragraph 18 of appendix 2 of the April 2007 publication *“The Communications Allowance and the use of House stationery”*.

To remedy this, my proposal is to write again to exactly the same group of people (in order to update them on my local campaign regarding Burnley General Hospital) and to state clearly on this second letter that both letters, and the January survey, were paid for out of the Communications Allowance. I would be grateful for your advice on this proposal.

2. I do consider that the second section of the constituency survey (for National Government Action) was within the rules of the House. The phrase “government action” was written to mean local issues that I as their constituency MP should take up with the government (as opposed to for example with the local council or local hospital trust). It was not intended to ask which general national political issues concern them most. There is no connection with the questions asked and any national political campaigning.

I consider this meaning to be clear from the way that the survey is introduced in the covering letter. Nowhere does it say that the purpose of the survey is to ask for views on national political issues. Instead the two references are firstly that its purpose is “to ask you what you’d like me to campaign for in your local area” and secondly “please fill in the enclosed form about what you’d like me to sort out in your local area”. Nowhere does it ask about what the government should be doing nationally, or what national issues, in general, they are concerned about.

I accept however that any uncertainty on this point could have been eliminated by checking the wording of both the letter and the survey in draft with the appropriate House authorities. We do normally do this, and indeed had done so for the other material you received, and I will ensure we always do so in future (see also paragraph 6 below).

3. The reference to the Labour Party using constituents’ contact details in the footnote to the survey was due to an error on the part of my staff for which I sincerely apologise. I had asked for the Data Protection Disclaimer to be included but failed to check it was the correct one. My staff member included the disclaimer they had seen used on other material, which happened not to have been paid for by the Communications Allowance, and simply copied it. However the words “or the Labour Party” should have been deleted for material paid for by the Communications Allowance.

I can categorically reassure you however that no data collected by this method has ever, will ever, or was ever intended, for use by the Labour party. Indeed until you brought this to my attention I had not been aware that the words “Labour party” were included. I have subsequently ensured that all my staff have received relevant training on this matter to prevent this happening again.

4. Yes the costs are being fully met from the Communications Allowance. We sent out 10,500 letters each enclosing a survey. The costs were: £600 for paper, £210 for printing, and £1,900 for distribution.
5. There have been no other similar surveys sent out in last twelve months.
6. Yes. My office manager spoke to the Department of Resources to check it was permissible to use House of Commons paper ordered on the [Banner G] account to undertake a mailing of this sort and also if it was permissible to use a FREEPOST address to return the surveys. Although we should have done so proactively we were not advised at that time to submit the precise words for checking, although we did in any case submit the Winter Report that was also complained about by Mr Reynolds for checking, as we usually do.

I hope this answers your questions. I would of course be happy to answer any further questions you may have, either in writing or in person.

13 March 2009

5. Letter to the Director of Operations, Department of Resources from the Commissioner, 16 March 2009

I would welcome your help and advice on a complaint I have received against Ms Kitty Ussher MP in respect of her use of the Communications Allowance for a letter and survey which she sent to her constituents in January 2009.

I attach a copy of the complainant's letter of 17 February together with the evidence on which he relies, my letter to Ms Ussher of 24 February and Ms Ussher's response of 13 March. As you will see, there were a number of complaints against Ms Ussher made by the complainant. I have decided to accept only one of these—about the letter and survey of January 2009.

I would be very grateful for your advice on this matter and on Ms Ussher's response. As you will see, she accepts that there should have been a footnote reference to funding having come from the Communications Allowance and suggests a remedy, and she accepts that the reference to the Labour Party in the footnote to the survey should not have been included. But she does not accept that the second question in her survey relating to "National Government action" was a breach of the rules. I should be grateful for your views on this in the light of paragraphs 26 and 27 of Appendix 2 to the Communications Allowance rules published in April 2007.

It would be very helpful if you could let me have your advice on these matters, particularly if you can do so within the next two or three weeks. I am letting Ms Ussher know that I am consulting you about this.

16 March 2009

6. Letter to the Commissioner from the Director of Operations, Department of Resources, 31 March 2009

Thank you for your letter of 16 March 2009 concerning the complaints made against Ms Ussher by Mr Darren Reynolds. I note that you are proceeding only with the complaint about the letter addressed to [a constituent] along with the January 2009 survey.

Neither the letter nor the survey was submitted to this Department for review prior to distribution, although Ms Ussher has submitted other items during the past financial year. I have now reviewed both items and agree that the letter is within the rules of the Communications allowance. However, had the survey been submitted for review we would have requested that (i) a different data protection notice be used; and (ii) an appropriate funding statement included.

The content of the survey, whilst including a national based question (number 2) would, on balance, have been approved by my staff. You have drawn my attention to the guidance in the Booklet *The Communications Allowance and use of House stationery* which says that generalised questions or those about "purely national matters are unlikely to be acceptable". Whilst this was so when the allowance was introduced in March 2007, with experience the Department has developed a slightly broader view on the acceptable content of surveys.

You may recall that I wrote to you on 27 March 2008 with reference to Mark Hunter MP, about surveys on national issues.¹ I indicated then that it was not the intention of the House's rules to prevent Members surveying constituents on national issues, but the concern was that the information gleaned was not used directly or indirectly in support of any political campaign run by a political party. This does not appear to be so in this case.

You will also be aware that the new Green Book, which takes effect from 1 April 2009, states "Surveys may ask questions on national or international issues." (Page 46, para. 2.5.4.3). This in effect codifies the approach the Department has taken about this issue in recent matters.

¹ Standards and Privileges Committee, Sixteenth Report of Session 2007-08, *Conduct of Mr Mark Hunter*, HC 1128, WE 10

Ms Ussher has acknowledged that a funding statement should have been included on the survey and also that the data protection notice was not acceptable for a publication funded from her Parliamentary allowances. She has also stated categorically that these were administrative errors, which she has addressed with her staff; I note also that she has apologised for the inadvertent breaches of the rules. In these circumstances I do not think that if the matter were for the Department alone that I would require Ms Ussher to reimburse the cost of the survey and its distribution.

I hope this covers the matters you have raised.

31 March 2009

7. Letter to the Director of Operations, Department of Resources from the Commissioner, 6 April 2009

Thank you for your letter of 31 March 2009 about the complaint against Ms Kitty Ussher MP in respect of her survey funded by the Communications Allowance.

I am having some difficulty following your conclusion on the second question in the survey, which asks constituents to identify from a list their top priority for national government action. My difficulty is bringing that question within the rules as set out in paragraphs 26 and 27 of Appendix Two of the April 2007 rules. I can see that the second sentence of paragraph 26 ("*but surveys that seek opinions and views purely on national and international matters are unlikely to be acceptable.*") provides some room for judgement since if such surveys are thought to be "*unlikely*" to be acceptable, it must be possible that some are acceptable. But paragraph 27 appears unequivocal in the examples of generalised questions which would not be acceptable. The example given appears very close to the question asked by Ms Ussher. Indeed, the inclusion of issues in relation to foreign policy seems to me to make it difficult to follow her argument that the list was of local issues which fall to national government to resolve.

I understand from your letter, however, that it was not the intention of the House's rules to prevent Members surveying constituents on national issues. You helpfully referred me to my inquiry into the complaint against Mark Hunter MP. I see from that however that your letter of 27 March 2008² referred to a proviso that national issues should be tailored to local circumstances and I note too that the Department asked for the removal of national questions in Mr Huhne's survey in the summer of 2007.³

It would be helpful therefore to know whether the Department's approach in permitting such questions is endorsed by the House in any way. And is there any guidance or other notes available to Members setting out this policy? Finally, are there any plans to amend paragraphs 26 and 27 of the rules to align them more closely to the policy?

I would be very grateful for your further help on this matter.

6 April 2009

8. Letter to the Commissioner from the Director of Operations, Department of Resources, 24 April 2009

Thank you for your letter dated 6 April 2009 in which you ask about the Department's interpretation of the Communication Allowance rules relating to surveys.

When the Department first reviewed Members' proactive communications the rules used by staff were those set out in the booklet "Communications Allowance and the use of House stationery". However, the rules relating to the allowance have been kept under review by the Members Estimate Committee as determined by the House in March 2007 (HC 319 refers). Your predecessor, Sir Philip Mawer, also produced a report on the allowance which fed in to the Members Estimate Committee's review of allowances, published in June 2008 (3rd report, HC 578-I, 2007-08)

² Ibid.

³ Ibid., paras 44-48

The MEC report recommended that “*Surveys may ask questions on national or international issues but data from local campaigns must not be transferred to national campaigns or used for local party campaigning*” (page 40, paragraph 140). This was approved by the House on 3 July 2008. The decision by the House was reflective of a strong view held by many Members and the Advisory Panel on Members Allowances, that disallowing claims for surveys unless they were of a local nature was too restrictive a practice. The House of Commons is uniquely a national body where Members are expected to debate national and international issues. Rules that limited Members to surveying constituents on local issues were, with hindsight too constraining. The Department therefore concluded in the summer 2008 that it should not stop Members from surveying their constituents about national events provided that the overall purpose of the allowance was met and proper regard was had to avoiding party political activity

The Communications Allowance rules were always likely to need amendment, not least because of the speed with which the above was implemented. Although this change to the rules was never set out in a reprinted booklet, staff in the Department have nonetheless implemented the House's expressed view.

I hope this clarifies my earlier letter to you about Ms Ussher.

24 April 2009

9. Letter to Ms Kitty Ussher MP from the Commissioner, 30 April 2009

I have now heard back from the Department of Resources with their advice on this complaint about your use of the Communications Allowance for the letter and survey you sent out in January 2009.

I attach a copy of their letter to me of 31 March and their further clarificatory letter of 24 April.

As you will see, had you submitted the letter and survey to them, the Department would have asked you to use a different data protection notice and to include an appropriate funding statement. But, on balance, the Department considers that the question about national government action in your survey would have been approved. This is for the reasons set out in the Director of Operations' further letter to me of 24 April.

After carefully considering this matter, I accept the Department's judgement and indeed your response of 13 March to this complaint. My conclusion, therefore, is likely to be that you were in breach of the rules in respect of the Communications Allowance on two technical issues, but you were not in breach of the rules of the House in respect of the content either of your letter or of your survey.

I need now to consider how best to resolve this complaint. If you agreed, it would be open to me to resolve the complaint myself using the rectification procedure. This is available to me where I conclude that the breach of the rules is accepted by the Member, it was inadvertent, it is not of a serious nature and the Member has taken appropriate action to rectify the matter and to avoid a recurrence. The Committee on Standards and Privileges would also normally expect a Member to apologise, as you have already done.

[process points]

30 April 2009

10. Letter to the Commissioner from Ms Kitty Ussher MP, 5 May 2009

Thank you for your letter dated 30 April 2009 regarding the complaint from my constituent Mr Darren Reynolds.

I am happy to fully accept your findings and judgement on the issue. I would like once again to apologise unreservedly for the technical errors made with the mailing and accept full responsibility for those. I have now put in place measures in my office to see that all future communications comply with the Green Book including ensuring any item is checked with the Department of Resources for their comments before distribution and regret having not done so previously with all my communications. In my most recent letter to constituents regarding Burnley General Hospital I have also, as I promised I would, included a note highlighting that the previous letter was paid for from the Communications Allowance.

I would also like to thank you for the speedy, thorough and discreet way in which you investigated this case. I hope this matter is now closed but if you require any more information from me on the issue please do not hesitate to get in touch.

With all good wishes.

5 May 2009