

INTERNS ANONYMOUS



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Joint Submission from Interns Anonymous and Intern Aware in response to IPSA's review of MPs expenses scheme – February 2011

Dear IPSA,

1. Thank you for giving us the opportunity to contribute to the consultation on the rules governing MPs expenses. We have limited our comments to the question of whether IPSA should continue to allow MPs to offer unpaid internships and whether IPSA should compensate MPs for the expenses incurred by their unpaid interns.
2. There is a gap between the skills, knowledge and experience MPs require of their staff and the competencies of people seeking entry level employment as a researcher and caseworker. Many people, including MPs, believe the best way to bridge that gap is through periods of internships since it gives interns the opportunity to familiarise themselves with Parliamentary procedure, casework and specialised IT software so they are ready to work in a MPs office.
3. However, there also appears to be another gap which we are seriously concerned has led MPs to exploit unpaid interns. Some MPs appear to us to be using unpaid interns as a source of free labour to fill the gap between their staffing resources and their Parliamentary responsibilities. For example, Philip Hammond MP sent an email on 12 August 2009 which explicitly confirmed that interns were contributing to his office and that he would have to employ more staff if he did not have interns.¹
4. The challenges facing young people looking for a job are immense. Graduates and school leavers now have to fight for a job in the most competitive market for a generation. Nearly 1,000,000 young men and women under 25 are without work and 18.5% of new graduates are unemployed. Understandably, young people are desperate to secure employment in their chosen field and many are willing to forgo

¹ <http://www.spectator.co.uk/martinbright/5279651/that-philip-hammond-email-in-full.shtml>

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their rights under the National Minimum Wage Act 1998 and work for free in the hope of making contacts, gaining experience and showing commitment. We are worried that MPs are exploiting this desperation in their use of interns.

5. We believe the present informal and unstructured system where MPs take on unpaid interns throughout the year and are subsequently compensated by IPSA should end. To fill the gap between the skills, knowledge and experience MPs require and the abilities of job seekers we believe a practical and fair solution is for IPSA to work with the main political parties to administer structured, formal and paid apprenticeships during the Summer and Easter recesses. This will ensure that these opportunities are open to all, and that MPs will have a pool of fully trained and committed applicants to choose from.
6. It is within IPSA authority and influence to bring about this change. Since IPSA sets the bounds of acceptable standards for MPs, we believe that if IPSA decided it was unable to continue to compensate MPs for the expenses incurred by their interns, MPs would no longer believe it was within the law or ethically permissible to recruit unpaid interns. In the consultation document for the amendments to the expenses scheme on 16 June 2010, MPs claimed that they were unable to recruit interns if they were not able to pay their expenses. Accordingly, if IPSA chose not to compensate MPs for the expenses incurred by their interns, we believe MPs would be significantly less likely to recruit unpaid interns in the future. IPSA has insisted that Interns are given a contract of employment akin to a casual worker in the past and we believe there is no reason that IPSA cannot insist on employment contracts for interns in the future.
7. We have identified three major flaws with the present system. First, our view of the National Minimum Wage Act 1998 and employment case-law is that it is highly likely that the relationship between interns and MPs is an employment contract, since in the vast majority of cases, interns are performing work in exchange for a benefit and are accordingly due the National Minimum Wage. The present system has

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insufficient safeguards to prevent MPs from either intentionally or unwittingly exploiting the vulnerable position of interns. Moreover, the present system exposes MPs to possible civil claims and convictions under the National Minimum Wage Act.

8. Second, internships limit the number of people able to pursue a career as either a researcher or caseworker. The experience and knowledge interns gather whilst undertaking an internship mean that interns are more attractive to MPs when they are recruiting for paid researchers and caseworkers. Moreover, doing an internship now sets up an intern for a future career in politics. Both the Prime Minister and the Leader of the Opposition began their political careers at a young age working in MPs' and Ministers' office. However, the present systems means internships are often only available to those who live in London and have the resources to support themselves through a sustained period of time. This inevitably makes it harder for many people from less affluent backgrounds or from outside London to find employment as researchers or caseworkers and as a consequence it makes it harder for those from less affluent background to pursue a career in politics and public life.
9. Finally, since resources are not distributed equally across ethnic groups it is highly likely that internships are a form of indirect discrimination. The Equality Duty under section 149 of the Equality Act 2010 which will come into force on 6 April 2011 and will replace the present Race Equality Duty, Gender Equality Duty and Disability Equality Duty means IPSA, as a public authority, must act in such a way to:
 - *eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;*
 - *advance equality of opportunity between people from different groups; and*
 - *foster good relations between people from different groups.*
10. Given that women, people from an ethnic minority and those with a disability are underrepresented in public life, we believe the Equality Duty requires IPSA to end

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any practice which hinders the ability of people with protected characteristics from entering public and political life.

11. We do not think it is appropriate for us to comment on whether MPs staffing budgets should be increased to bridge the perceived gap between MPs resources and responsibilities. However, we would like to reiterate our belief that is unacceptable and illegal for MPs to use unpaid interns to fill this gap. Where interns are working, they are legally entitled to the National Minimum Wage and this will need to be paid from the MPs staffing allowance.

The Legal Status of Interns in MPs office

12. As we are sure you are already aware, there is no legal definition of an intern. Various legal statuses have been attached to MP's interns including volunteer, students, someone work shadowing or worker. Volunteers, students and those work shadowing are not due the National Minimum Wage whilst workers are.

Are Interns Work Shadowing?

13. Work shadowing has been very narrowly defined in the National Minimum Wage Act as someone who is shadowing an employer without performing work. Charities such as Operation Black Vote have operated successful shadowing schemes in conjunction with MPs to open up politics to those who did not consider it an option for them. However, these programmes do not involve the work shadower contributing to the MPs office whilst most Parliamentary internships do. For example, Chris Heaton-Harris MP placed an advert on 4 February 2010 on the website www.w4mp.org recruiting an intern to perform menial and administrative tasks clearly contributing to his office:

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The main responsibilities will include scanning and filing casework correspondence, maintaining the contacts database and general administrative tasks.²

This is clearly not an example of work shadowing since the intern does not spend their time shadowing the MP but is expected to perform work which the MP or his paid staff will not be doing. Given the immense pressures on the time and resources MPs find themselves under, we believe it is unlikely that MPs are able, let alone willing, to embark on a long term program of work shadowing.

Are Interns undertaking vocational training?

14. In the case *Edmonds vs Lawson QC [2000] EWCA Civ 69*, the High Court held that the relationship between a Barrister and a Pupil was neither a contract of employment nor a contract of apprenticeship. The pupil in this case was not due the minimum wage since the relationship between the pupil and their supervisor was akin to a lecturer and a student. It has been argued that this case legitimises the use of unpaid internships since the MP is training the intern in how to be a researcher or caseworker. However, the parallels between *Edmonds* and the experience of most Parliamentary interns are extremely limited. First, the High Court found that the pupil was essentially a short term burden on the supervisor, the pupil had the potential to return the investment and time placed in her but during her pupillage she was a drain on the supervisor's resources since there is a vast amount of knowledge and experience a pupil must gather before they can practise themselves. While the job of a researcher or caseworker is complex, it does not demand the same specialised knowledge or regulatory compliance as that of a fully qualified barrister.

15. Second, in *Edmonds*, it was found that when the pupil did perform work of real value she was compensated. The majority of her work, however, was not of real value and

² http://w4mp.org/html/personnel/jobs/disp_job.asp?ref=28323

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did not contribute to her Chambers. This is not true in the case of unpaid interns, their work does contribute to the MPs office and yet they receive no compensation.

16. Finally, in *Edmonds* it was found that there were rules and expectations that governed the training of pupils: pupils had to be adequately supervised and mentored. There was a considerable body of knowledge and skills that had to be learnt. At the end of her pupillage the pupil received an officially recognised qualification which completed her training for the bar; without which pupil cannot work as a Barrister. In the case of MPs researcher and caseworkers there is no obligation on them to have an officially recognised and audited qualification. Moreover, a pupil supervisor would only undertake one pupil at a time, whilst MPs are known to take on several interns simultaneously. The Unite Parliamentary Branch has estimated that there are as many as 450 interns working in Parliament at any one time. With this in mind, we believe it is highly unlikely that MPs have either the time, resources or desire to train interns without any expectation that they will immediately contribute to their office. Accordingly, we do not believe MPs can recruit interns as vocational trainees and consequently MPs are not protected by the safeguard in *Edmonds*.

Are Interns volunteers or workers?

17. A volunteer does not have a contract of service, they can come or go as they please without consequence and they do not expect compensation for their work. They are not required to work set hours or perform set duties. Equally an MP is not obliged to supply them with work. However, if an MP relies on work performed by an intern then they are a worker.

18. We believe it is highly unlikely that an MP can recruit a volunteer intern without forming a contractual relationship where the intern is required to perform work in return for a benefit. The National Minimum Wage demands, with the exception of a few very narrowly defined set of circumstances which cannot apply to MPs, that

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where a contract to perform work is created the benefit the worker receives must include a monetary payment equal to or greater than the National Minimum Wage.

19. As you are probably aware, a contract is not a piece of paper or an agreement but it is description of a relationship where the parties supply goods or services in exchange for payment (consideration). It is important to bear in mind that parties can still form a contract even if that is not their explicit or implicit intention. The test of whether a contract has been formed is whether an objective observer viewing the relationship from outside would consider the relationship binding; intent can be inferred by the courts even if it had not crossed the minds of the parties. In the case of *Vetta vs London Dream Motions Picture Ltd.* an employment tribunal found that even though the two parties freely entered into an expenses only agreement, a contract of employment was still formed even though this was not the intention of the parties at the formation of the contract. Furthermore, a contract can still exist even if neither party is likely to enforce it through the courts.

20. Consideration in a contract does not have to take the form of monetary payment; it may be perks or a benefit such as training. Consideration can also come in the form of an employer's reference or the opportunity to make contacts since these are likely to have value and increase the employability of the intern in the future. Where the intern is working in expectation of a benefit, perk or a reward (such as an employment reference) and is working under the assumption that that benefit is conditional on performing work it is highly likely that an objective observer would regard that relationship as a binding contract since there has been an exchange of labour for an anticipated benefit. Likewise, where an MP recruits an intern in the belief that they will contribute to their office and in return the MP will enable and support the intern in the future to pursue a career in Parliament an observer is likely to find that these benefits has been offered in exchange for work. An explicit example of this is the advert Nadine Dorries MP placed on the website www.w4mp.org on 12 January 2011:

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Voluntary position, travel and lunch expenses paid

*A 4 day per week internship (Mon-Thurs), to start 26 January 2011 (flex, **within reason**), is offered to assist the Senior Caseworker and MP. It is located in Westminster.*

The position will involve making diary appointments, speaking to constituents on the telephone, conducting casework research and drafting letters/emails for constituents. There will also be a fair amount of research involved for the MP and you will be attending meetings.

*Ideally, we would like the candidate to be available up until early June where you **will be ready to apply for a paid role as a relatively senior Parliamentary researcher for another MP, should you so wish.***³ [emphasis added]

21. If an MP made it explicit in any advert recruiting a volunteer that no reference would be given, we expect very few people, if any, would apply. There may be a very small number of people who volunteer in MPs offices with no aspiration or intention of receiving a benefit such as experience or contacts. An example would include volunteer caseworkers who find supporting people in difficult circumstances such as refugees rewarding. We believe that the vast majority of interns work for MPs in the expectation of receiving a reward in some form. Where consideration is offered or expected in return for work, that consideration must include monetary payment equal to or greater than the National Minimum Wage.
22. Our survey of Parliamentary interns revealed that 76% of those who replied were required to perform set hours and set tasks. In the vast majority of cases, the MPs' interns felt they were working and not volunteering. Some MPs have argued that they can lay out reasonable expectations of their interns without forming an

³ http://www.w4mp.org/html/personnel/jobs/disp_job.asp?ref=27953

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employment contract relying on the case of *South East Sheffield Citizens Advice Bureau v Grayson [2003] UKEAT* where the Employment Appeal Tribunal found that this organisation could lay out ‘reasonable expectations’ without placing ‘obligations’ on its volunteers. We do not believe that MPs can claim the same protection as South East Sheffield Citizens Advice Bureau. In that case, the Employment Appeal Tribunal found that there were no effective sanctions available to the South East Sheffield Citizens Advice Bureau if the volunteer failed to meet the reasonable expectations. An MP, on the other hand, has the option of withholding a valuable reference if the intern fails to perform their duties as expected. It is clearly implied in Ms Dorries’s advert that a reference is conditional upon attending certain amount of days and committing to a specific period of time; flexibility can only be ‘within reason’. A more blatant example of an MP expecting their intern to commit for a set period of time is the recent advert placed by David Gauke MP who insists his intern commits to a minimum of 6 months.⁴ Furthermore, the Employment Appeal Tribunal found that South East Sheffield Citizens Advice Bureau was dependent upon volunteers, while this is not the case regarding MPs offices since they receive a staffing budget for 3.5 full time staff. This was considered by the Review Body on Senior Salaries in their *Review of Parliamentary Pay, Pensions and Allowances 2007*. Finally, the Employment Appeal Tribunal held it was beneficial for the volunteers if the organisation, a charity, lay out reasonable expectations as that would mean the volunteers efforts would be most effectively used and would support the volunteers’ own altruistic aims. The aims of most interns, however, are not solely altruistic but include a strong element of career development. When the experience of most MPs interns are compared to that of volunteers at South East Sheffield Citizens Advice Bureau, the possibility of laying out ‘reasonable expectations’ without forming a contract does not, in our opinion, exist for MPs.

⁴ http://www.w4mp.org/html/personnel/jobs/disp_job.asp?ref=28407

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23. The model intern agreement on IPSA’s website clearly attempts to avoid forming a contract; however the expectations laid out on both sides appear, in our view, to lay out an obligation to perform work on the part of the intern and obligations to provide consideration in return for the intern’s work. For example, paragraph 1 of the Intern’s obligations specifically states that the intern is contributing to the MP’s office. Paragraph 4 refers to an obligation on the intern to maintain confidentiality and paragraph 5 lays out that the MP expects the intern to meet time commitments. In return for this work, the MP commits himself to support the personal development of the intern. This term is deliberately vague. However, we believe that an intern and an objective observer would interpret this to include the opportunity to make contacts, gain experience and receive an employment reference. Accordingly, we still believe a contract of employment can still be formed and are being formed even if the MP and intern sign the model volunteer agreement.
24. Considering the relationship between MPs and Interns as they are advertised, experienced by our members and described in the model volunteer agreement we believe the vast majority are contracts of employment and consequently interns are due the National Minimum Wage. We believe that IPSA is giving a misleading impression to MPs and interns by funding the expenses of unpaid interns. The impression that it is possible to recruit interns without forming a contract of employment exposes MPs to civil claims and even possible criminal conviction under Section 31 (a) of the National Minimum Wage Act.

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Lack of Transparency and Safeguards

25. IPSA was set up in response to intense public anger at the way MPs were taking advantage of the lax system of self-regulation. Quite rightly the present system has moved away from self-regulation to independent verification. Employment contracts have to be approved by IPSA, all expenses must be backed up by receipts and there is an independent compliance process. The only part of a MP's office which is not transparent and independently checked is the relationship between MPs and their interns.
26. The onus is on the MP to report to IPSA if the relationship between an MP and intern moves beyond a voluntary arrangement into employer – worker relationship. This requires detailed legal knowledge which MPs are unlikely to possess. Moreover, the perceived legal ambiguity regarding the status of interns and the trust placed on MPs that they will report any change in the legal relationship between themselves and their interns means that there is a space which MPs may choose to or inadvertently exploit to acquire free labour.
27. With the exception of Interns' employment status every other aspect of an MP's office begins from a default position of mistrust, i.e. if the MP cannot justify the expense with receipts, they will not be paid. We believe the same default position of mistrust should apply to interns' employment, i.e. if an MP cannot prove that the intern is a volunteer then IPSA should assume the intern is an employee and insist that the intern is paid as worker.
28. Given the problems outlined above in the model intern agreement, we do not believe there is an effective, transparent and robust alternative safeguard that ensures that interns are not exploited. In the interests of maintaining faith and trust in MPs we do not believe that they should be compensated for the costs involved in supporting volunteer interns since there is no effective mechanism to ensure that MPs are not exploiting them. For the reasons outlined above in paragraph 6 we

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believe that it is within IPSA's power and influence to bring the present practise to an end.

29. IPSA was created to rebuild trust and faith into our political life. As Sir Ian Kennedy says in the forward to the present consultation regarding MPs expenses one of the key aims of IPSA is to 'contributing to the restoration of public confidence in our democratic institutions.' Accordingly, we believe IPSA would be failing in one of its most important aspirations if it allows the suspicion that MPs are exploiting their interns to continue.

Social Mobility

30. Regardless of the legal status of unpaid interns working in an MPs office, there are credible and compelling ethical arguments against the present system. As Alan Milburn found in his report *Access to the Professions*, 'Internships are an essential part of the career ladder in many professions.'⁵ Or in other words, without first undertaking an unpaid internship it is exceptionally difficult to undertake a career in many of the professions including politics. The importance and advantage of undertaking an internship is clear from the fact that even applicants for entry level position are expected to possess relevant experience. For example, Jim Murphy MP is presently recruiting a Parliamentary secretary, as part of the person specification he expects the ideal candidate to possess 'working knowledge of Parliament [...] and a good knowledge of parliamentary process'⁶. Mr Murphy is proposing to pay £18,000 to £21,000 which many would consider a salary appropriate for graduate at the start of their career. A former or present intern would clearly be at an advantage when applying for this position and Mr Murphy seems to be expecting the applicants to have undertaken a considerable amount of work experience.

⁵ Milburn, Alan et al. *Access to the Professions* (London, 2009), p. 99.

⁶ http://www.w4mp.org/html/personnel/jobs/disp_job.asp?ref=28331

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31. The present system of ad hoc and unstructured internships favours the affluent and those who are able to live in London without paying rent. The costs of living in London are high. The London Living Wage estimates the minimum that a man or woman can survive on when living in London is £7.85 an hour or £274.75 a week (based on a working week of 35 hours). Since it takes 6 weeks on average to arrange housing benefit, council tax benefit and job seekers allowance, moving to London to undertake an unpaid internship while being dependent on benefits is simply not an option for those without substantial personal resources.
32. The obligation to undertake a sustained period of unpaid work also reinforces psychological barriers for many. Alan Milburn's report reported that 'We have been shown research demonstrating that the less advantaged are most put off by the costs of undertaking an internship.'⁷ Regardless of the fact that Interns are probably workers as defined by the National Minimum Wage Act, the present system excludes too many talented and creative people from a fulfilling and meaningful career in politics, limits the gene pool from which MPs can hire staff and reinforces the social and psychological barriers which prevent many from entering public life. As Andy Burnham MP said in the House of Commons,

What further restricts opportunities for young people is the culture of unpaid internships, where young people are expected to come to London to work for free. That is beyond the reach of many working-class young people in this country, who simply cannot afford to work for free for three months in London. That is what ensures that the top jobs remain in the reach of a small social circle.⁸

⁷ Milburn, Alan et al. *Access to the Professions* (London, 2009), p. 101

⁸ HC Deb, 8 February 2011, c184.



Discrimination.

33. Section 149 of the Equality Act 2010, The Equality Duty, which will come into force on 6 April 2011 and will replace the present Race Equality Duty, Gender Equality Duty and Disability Equality Duty, means that IPSA, as a public authority, must act in such a way as to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- advance equality of opportunity between people from different groups; and
- foster good relations between people from different groups.

To undertake an unpaid Parliamentary internship requires significant resources. The intern must be able to live and work for normally 3 months (often 6 months) without receiving an income.

34. Those from ethnic minorities, those who are carers and those who have a disability are less likely to have the resources to undertake an unpaid internship. The Equality and Human Rights Commission has found that ‘some groups are far more likely than others to experience poverty, to lack access to financial products, or to live in substandard housing. The evidence shows stark disparities in relation to gender, disability, and ethnicity’⁹. For example, EHRC found ‘that the Bangladeshi and Black African groups are positioned very low in the wealth distribution, as are the Pakistani, Black Caribbean and Chinese groups.’¹⁰ Moreover, those families which contain at least one member with a disability are 50% more likely to have an income 60% below the median wage. People with disabilities and people from an ethnic minority are underrepresented in public life. Given the vital role internships play in embarking on a career in politics, we believe the expectation that interns work for a sustained period time significantly contributes to the challenges faced by those from

⁹, *How fair is Britain? Equality, Human Rights and Good Relations in 2010, The First Triennial Review* (London, 2010), p. 460.

¹⁰ *How fair is Britain?*, p. 470.

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underrepresented groups who wish to enter public life. As a public authority, IPSA must act in such a way to enhance equality of opportunity. By allowing MPs to recruit unpaid interns we believe it is failing to act in such a way.

35. The Equality Challenge Unit, which works in the Higher Education section to remove barriers for underrepresented groups from accessing higher education, undertook research into work experience and informal recruitment in the media sector and concluded that, 'Deeply embedded notions of the 'ideal student' and 'ideal work placement candidate' were uncovered in this research that work in favour of middle-class, white, male and non-disabled students.' A fundamental aspect of this was the expectation to undertake sustained periods of unpaid work experience which The Equality Challenge Unit concluded was far harder for students for Black and Ethnic Minority students (BME Students) since, 'BME home students [...] tend to come from disadvantaged socioeconomic groups.'¹¹ We believe that the challenges faced by interns in finding and surviving unpaid internships (access to finance, access to contacts and access to London) are the same as those experienced by those seeking to work in the media. Consequently, the conclusions of the Equality Challenge Unit are likely to be equally applicable to the political sector including their conclusion that the present system favours middle class white and non-disabled job seekers.

36. Accordingly, we believe IPSA is indirectly discriminating against these people as they are complicit in a system which favours affluent middle class non-disabled white people in accessing politics and hinders those from ethnic minorities and those with disabilities. We urge IPSA to consider very seriously when it conducts its Equality Impact Assessment whether it is possible to meet its future obligations under the Equality Act and its present obligations whilst allowing a practise that hinders those who happen to care for someone else, have a disability or come from an ethnic minority.

¹¹ *Work placements in the arts and cultural sector: Diversity, equality and access* (London, 2010), p. 58.

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The solution

37. Structured, open and resourced internships benefit interns and MPs. Ad hoc, unstructured informal and unpaid internships do not. They exclude too many, are likely to be illegal and possibly discriminatory. Furthermore they expose MPs to possible civil action and criminal conviction under the National Minimum Wage Act. We believe the best way to ensure that politics as a career is open to all and to ensure that MPs have excellent candidates to call upon when recruiting staff is for the present system to be abolished and replaced with paid apprenticeships run over the summer and Easter recesses.
38. IPSA should work with the Parliamentary authorities and the major political parties to develop apprenticeships which are open to all, cover Parliamentary procedure, convention and protocol. The apprenticeships can also train the apprentices in how to use the specialised caseworker software used by the parties; teach them how to access the Parliamentary library; teach them how to research and draft correspondence and how to deal with the press. These should be fully paid at least the London Living Wage to ensure that there are no financial or psychological barriers that preclude entry to those from less affluent backgrounds. IPSA, Parliament and the political parties should also consider hiring out student accommodation for the apprentices over the Summer and Easter recesses so that there is accommodation available for those who do not live in London.
39. This will ensure that MPs are not exposed to civil or criminal claims arising out of the National Minimum Wage, that opportunities are available to all regardless of social or ethnic background, remove any suspicion that MPs are exploiting the system and ensure that entry level positions are available to the best people based on merit rather than personal wealth.

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40. Thank you again for giving us the opportunity to contribute to the consultation and we hope you will take our comments on board when developing the next expenses system.

Yours faithfully,

Interns Anonymous and Interns Aware