

Date: 11 October 2000
Time: 9.00 a.m to 12.20pm
Venue: Committee Room, National Assembly

Presentation of an Ombudsman's Report and Draft Response

Standing Order 21-Complaints Procedure

1. Standing Order 21 covers the procedures to be followed for consideration of reports from the Welsh Administration Ombudsman and the Health Service Commissioner for Wales. Where the report states that the complainant has suffered injustice or hardship as a result of maladministration, the Assembly Secretary is required to submit that report to this Committee within 20 working days of receipt, together with a draft response to the report setting out the action taken or proposed to be taken.

2. Following the Committee's consideration of the draft response, it will be presented to the First Secretary who is responsible for notifying the Ombudsman of the action taken.

The Complaint

3. The Committee is asked to consider the report from the Ombudsman in respect of Case R.42/99-00 (Mr A). The details of this complaint are set out in Annex 1. A copy of the Ombudsman's report is at Annex 2 and the proposed response for the First Secretary to send to the Ombudsman is at Annex 3.

Proposal

4. The Agriculture and Rural Development Committee are invited to agree the draft response at Annex 3 to be issued by the First Secretary to the Welsh Ombudsman.

CAP Management Division

October 2000

Annex 1

CASE SUMMARY - MR A (R42/99-00)

BACKGROUND

The Sheep Annual Premium Scheme (SAPS)

The Scheme forms part of the European Community's sheep-meat and goat-meat regime. The main aim of the regime is to ensure a single, harmonised market for sheep-meat and goat-meat throughout the Community and to guarantee producers a common level of support. The annual ewe premium is a deficiency payment made to producers and is the means by which the common level of support is achieved.

The Hill Livestock Compensatory Allowance

This Scheme is intended to supplement the incomes of livestock farmers in the Less Favoured Areas (LFA) to take account of the permanent natural handicaps that restrict farming activities in those areas. The purpose of the Scheme is to ensure the continuation of extensive livestock farming in those areas, thereby helping to maintain a viable population in the LFA and to conserve the countryside.

Inspections

Member States are required to make administrative and field checks to ensure that claimants comply with the rules of the above Schemes and the criteria under which premium is paid. A main objective of an inspection is to establish the number of eligible animals kept by the producer throughout the retention period for the Schemes (ie in this case 4 February to 15 May). Both Schemes require a number of eligible animals to be retained throughout the retention period and to verify this producers must also keep records laid down in EC Directive 92/102.

The Sheep and Goats (Records, Identification and Movement) Order 1996 (SAGRIMO)

SAGRIMO amongst other provisions, implemented the requirements of EC Directive 92/102 as far as it relates to sheep and goats. A guide to the legal requirement was published in January 1996 and sent to all known claimants.

The main requirements are:

- i. a movement record of sheep or goats to and from a farm which must contain:
 - the date of movement;
 - the identification mark of the animals moved;
 - the total number of sheep and goats moved;
 - the holding from which the animal is moved;
 - the holding, including market or slaughterhouse, to which the animal is moved;
 - the total number of sheep and goats on your premises at 1 January each year;

The records must be retained by the person making the record for a period of three years

from the end of the year in which the last entry was made.

ii. A continuous up-to-date record of the number of female sheep on the holding which are twelve months old or older, or which have given birth. The record must show the total number of such sheep as at 1 January each year and must thereafter record changes within 14 days of:

- sheep being moved on or off the holding;
- sheep which have not given birth reaching twelve months old;
- sheep which are under twelve months old giving birth to a lamb;
- discovering that sheep have been lost or have died;

and must contain:

- the reasons for changes in the total number;
- the cause of losses, if known;
- the date of every entry.

The record must be kept for a period of four years from the end of the year in which the last entry was made.

CASE BACKGROUND

A combined claim for 1998 SAP/HLCA was received from Mr A on 22 January 1998. This was in respect of 1,000 sheep under SAPS and 887 Specially Qualified Ewes under HLCA.

Mr A was selected under our Risk Analysis system for a field inspection for SAPS which was arranged for 13 May 1998. The examination of the records revealed a number of weaknesses. The inspecting officer's report showed the following discrepancies:

- The records were in pencil;
- No losses were recorded in 1997;
- No actual, or discovery, dates of losses were recorded in 1998, and there was no running total; and
- No running totals for previous years (ie 1994 to 1996).

The inspecting officer was informed that 100 ewes had been stolen between July 1997 and September 1997 but despite the incident being reported to the police, this loss had not been entered in the record.

Following a telephone call from Mrs A on 7 September 1998 she was informed, later that day by telephone, that her husband's 1998 SAPS/HLCA claims would be rejected because of their failure to maintain records in accordance with the Scheme requirements. This was also confirmed in writing by the Department to Mr A on 7 September 1998.

Appeals were received from Mr and Mrs A, the Country Landowners Association, the National Farmers Union and Elfyn Llwyd MP, all of which were turned down.

CONCLUSION

Mr A signed an undertaking to keep and retain records under the Sheep and Goats (Records, Identification and Movement) Order 1996 (SAGRIMO) together with any vouchers, receipts or other documents necessary to validate the accuracy of these records.

Mr A failed to comply with the regulations in a number of respects but, in particular, he recorded no losses in 1997 (including 100 sheep he maintains were stolen from his farm); he has not recorded a running total for the number of sheep on his holding; and such dates as are entered in 1998 are imprecise. The records were compiled by Mrs A and she was informed orally of these irregularities by the inspecting officer on the date of inspection. In addition, the inspecting officer noted that entries in the records were being maintained in pencil which, in itself, could not be regarded as sound accounting practice.

Mr A informed the inspecting officer that he had reported the theft to the police and there should have been no difficulty in putting an entry in the records.

The fact that the number of sheep counted by the inspecting officer matched the claim is not in dispute. It is on the basis of poor record-keeping, not a shortfall in the number of sheep, that Mr A's claim was rejected; and we accept there was no intention to defraud the Department.

It was unfortunate that Mr A was not made aware that we would not be paying premium/allowance due to the inadequacy of his records until September 1998 (some four months following the inspection), but it was at a time when the Divisional Office was under tremendous pressure to process claims.

The inadequacy of Mr A's record keeping is such that it would set a very poor example to other farmers, and expose the Assembly to audit criticism, if he were not to face a substantial penalty. It has been decided, however, that an exceptional payment should be made to Mr A in respect of the full value of his HLCA claim (£5,100.25), subject to final scrutiny. Mr A will still be penalised for failing to maintain adequate records by the Assembly continuing to withhold payment of his SAP claim.

Discussions are currently taking place with the other Agriculture Departments in the UK about whether withholding the full payment on SAP is the appropriate penalty in such cases or whether withholding part of the payment would be more appropriate.

OMBUDSMAN'S FINDINGS

The Ombudsman found no maladministration and considers the above course of action to be a reasonable and satisfactory outcome. He is also pleased that we are pursuing a system of graduated penalties for inadequate flock records with the other UK Agriculture Departments.

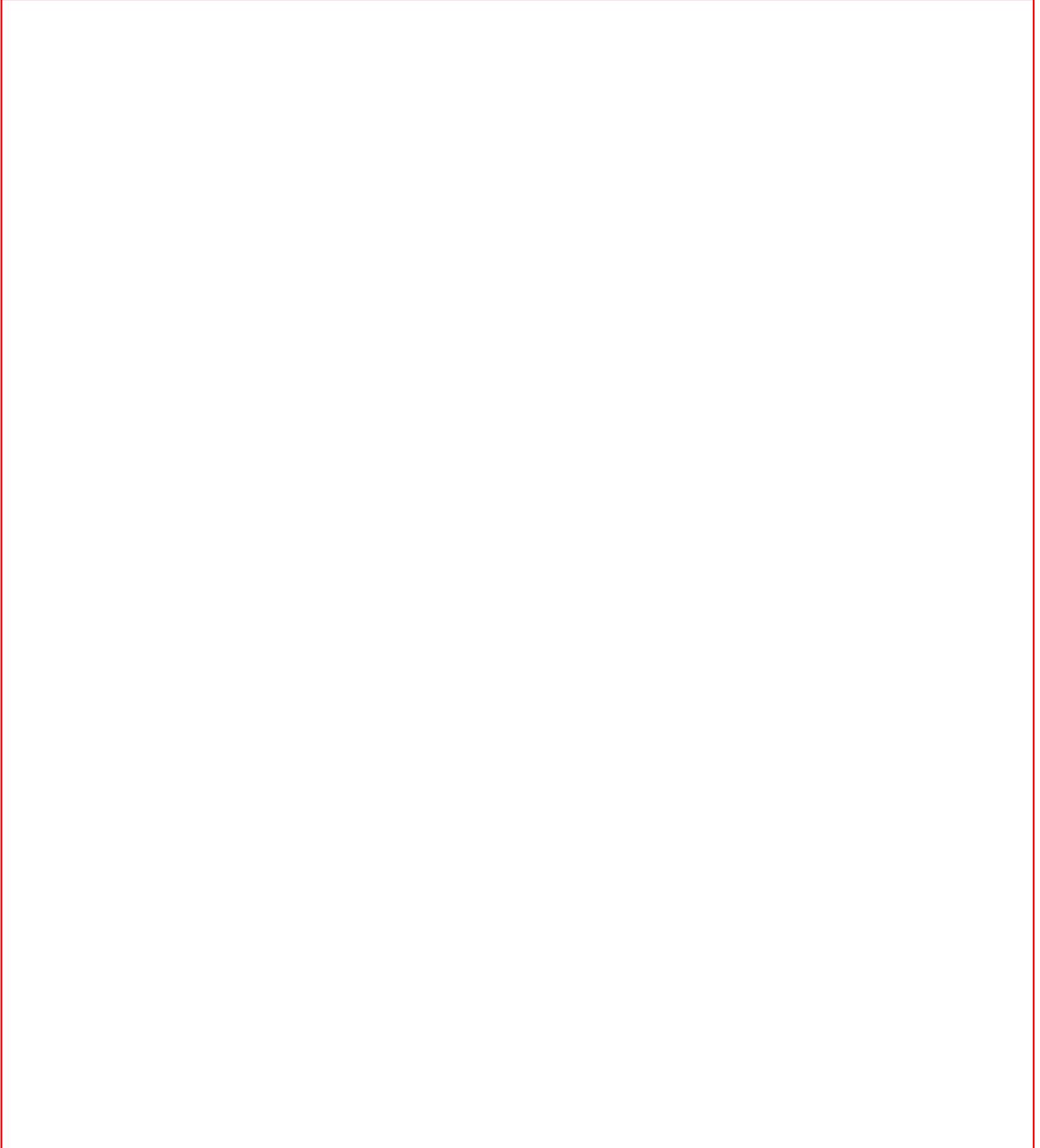


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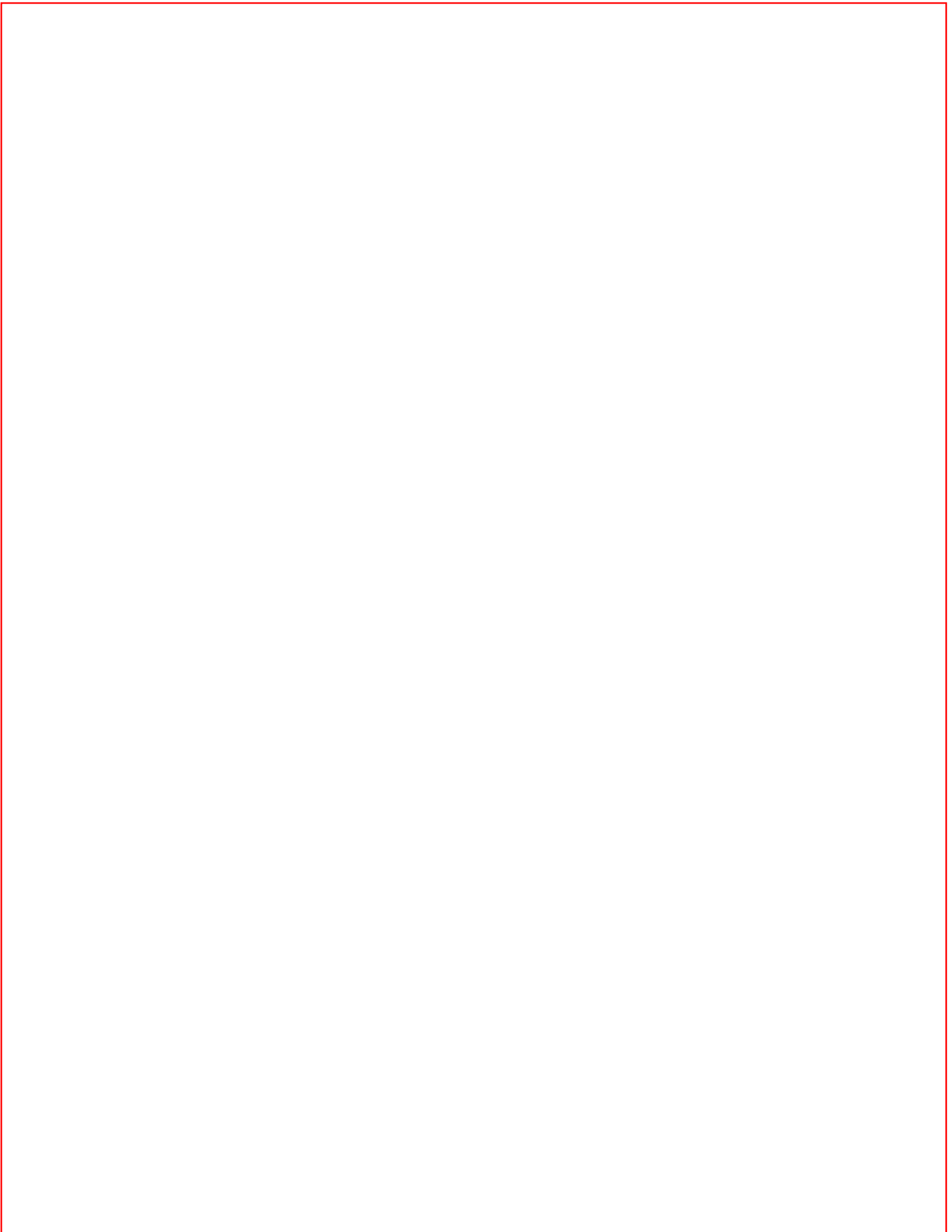


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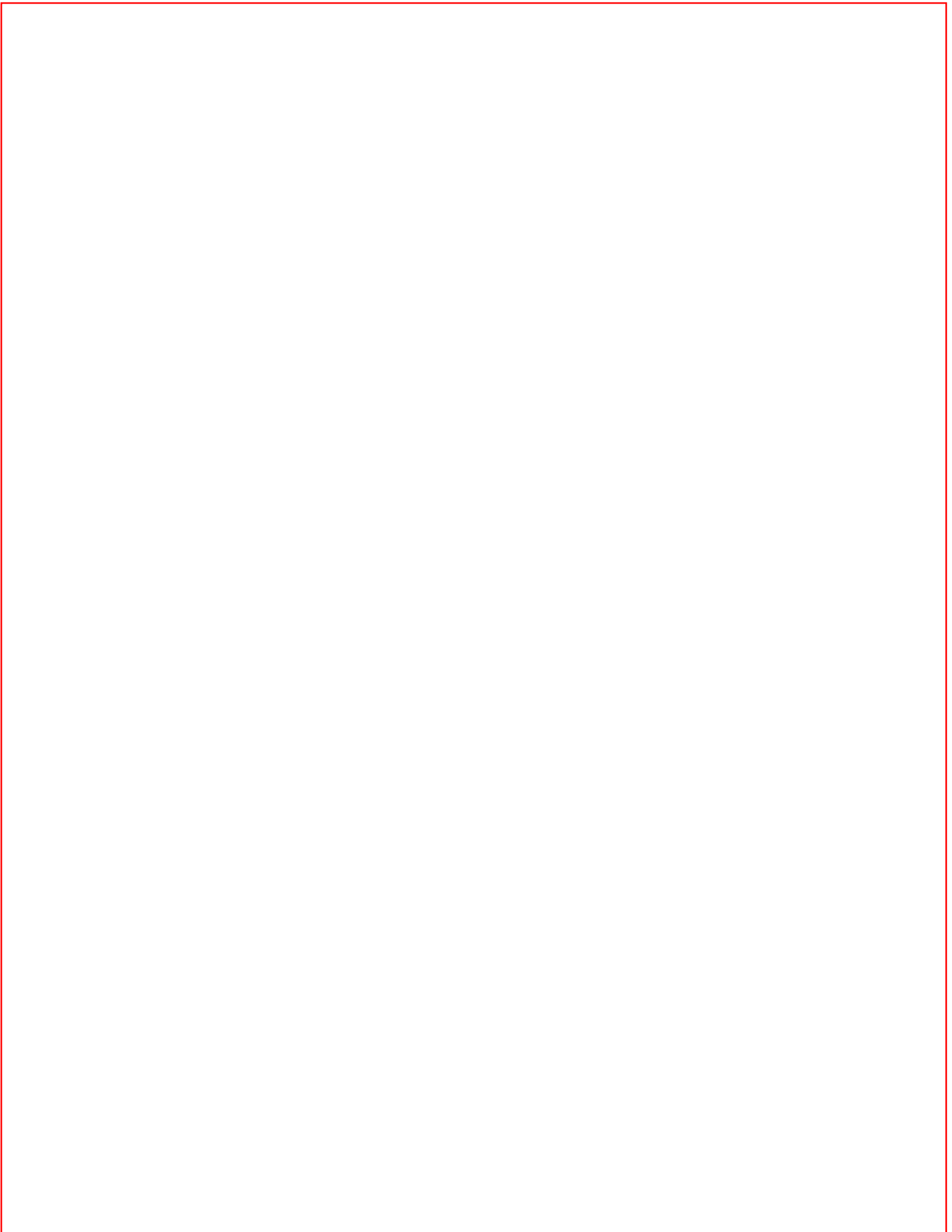


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Annex 3

Rt. Hon. Rhodri Morgan AM MP

Your ref: R.42/99-00

Mr Michael Buckley
Welsh Administration Ombudsman
5th Floor
Capital Tower
Greyfriars Road
Cardiff

Thank you for your Investigations Manager's letter of 5 September enclosing the final report on the complaint made by Mr A under your above reference that WOAD unreasonably refused payment of his

1998 Sheep Annual Premium and Hill Livestock Compensation Allowance .

The National Assembly for Wales is grateful for the work undertaken and has now considered and assessed your Investigating Officer's findings. I note that the report concludes that as a result of the Ombudsman's intervention, the National Assembly for Wales Agriculture Department reviewed Mr A's case and has arrived at an equitable solution.

I am sorry that we are not able to pay the Sheep Annual Premium to Mr A but as recognised in your report, there was no maladministration in WOAD's handling of this case. The Assembly decided to make an exceptional payment to Mr A in respect of the full value of his 1998 HLCA claim. I am pleased that you have recognised the action taken as a satisfactory outcome to the complaint.

Thank you for bringing Mr A's complaint to our attention.