

Date: 14 September 2000
Time: 2.00 pm to 4.20pm
Venue: National Assembly Building, Cardiff Bay

Presentation of the Ombudsman's Reports and Draft Responses

Standing Order 21 - Complaints Procedures

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 action 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 Complaints

3. The Committee is asked to consider reports from the Ombudsman in respect of -

- **Ombudsman Case R50/99-00 (Mr and Mrs X)**

The details of this complaint are set out at 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.

- **Ombudsman Case R9/99-00 (Mr A)**

The details of this complaint are set out at annex 4. A copy of the Ombudsman's report is at annex 5 and the proposed response for the First Secretary to send to the Ombudsman is at annex 6.

- **Ombudsman Case R31/99-00 (Mr X)**

The details of this complaint are set out at annex 7. A copy of the Ombudsman's report is at annex 8 and the proposed response for the First Secretary to send to the Ombudsman is at annex 9.

Proposal

4. The Agriculture and Rural Development Committee are invited to agree the draft responses at annexes 3, 6 and 9 to be issued by the First Secretary to the Welsh Ombudsman.

CAP Management Division

September 2000

Annex 1

Case Summary Mr and Mrs X (R50/99-00)

Mr and Mrs X complained that the former Welsh Office Agriculture Department incorrectly allocated their quota. Consequently the payment of their 1998 Sheep Annual Premium (SAP) claim was unreasonably delayed.

Background

In 1993, UK Agriculture Departments wrongly allocated sheep quota to Trading Titles rather than individuals in a number of cases. Correction of this was not undertaken in Wales until 1997 when the Welsh Office Agriculture Department (WOAD) set up small teams to re-allocate the quota in such cases. (WOAD has already been criticised by the Ombudsman for this delay on a previous case.)

Initially, cases were identified where allocations of quota to existing SAP claimants had been made to a trading title which consisted of more than one name. It later came to light that there were also cases where national reserve allocations to new SAP claimants had also been incorrectly made in the names of partnerships. These cases were not identified until the 1998 payment claims were being processed. Mr and Mrs X fell into this category and this is why their case was not dealt with as part of the main trading title exercise in Wales which was carried out in May 1997.

Case Background

Mr and Mrs X first claimed SAPS in 1993 as a "sole producer".

Mr and Mrs X's claims between 1993 and 1997 were processed and paid without any difficulty. In January 1998 Mr and Mrs X submitted their 1998 SAPS claim for 93 ewes (subsequently reduced to 90 ewes after the loss of 3 animals). This claim was not processed immediately as the supporting quota was identified as allocated to a Trading Title rather than individuals. The claim was therefore filed with all other SAPS 1998 claims which could not be processed at the time. It was intended that such cases would

be dealt with once the main run of claims had been processed.

Mr and Mrs X's SAPS claim was not reviewed until October 1998. It became clear that they had not been asked to complete a declaration form detailing the basis of their business (ie the ownership of their flock) to enable the quota to be allocated correctly. Mr and Mrs X were not asked to complete this form until 16 April 1999 which was subsequently returned on 26 April 1999. No action was taken after 26 April due to conflicting priorities within the Divisional Office Quota section.

The X's 1998 outstanding SAPS claim came to light when the Euro Compensation payments were being processed in July 1999. At which point the 90 quota units which had been allocated to Mr and Mrs X were shared equally between them. This enabled their Euro Compensatory Payment to be released on 10 September 1999 and their 1998 SAP payment to be paid on 16 September 1999.

On 4 October 1999 Mr and Mrs X requested an explanation for the delay in payment and sought an interest payment. A reply was sent to Mr and Mrs X on the 3 November 1999 apologising for the late payment but refusing the interest payment request.

In December 1999 the NFU appealed on behalf of Mr and Mrs X.

A reply was sent on 8 February 2000 conceding that there was considerable delay in processing of the claim, however, there was no entitlement in law for interest to be paid on delayed or late payments.

Conclusion

The National Assembly for Wales Agriculture Department (NAWAD) has previously accepted the Ombudsman's criticism for the delay in reallocating sheep quota to individuals rather than to trading titles.

Mr and Mrs X's payments were delayed specifically because the former WOAD did not undertake the trading title exercise quickly enough. Mr and Mrs X's payment was further delayed as wrongly allocated quota to new entrants to the SAPS scheme were not identified until the 1998 SAP Scheme year.

Consequently, NAWAD agreed to pay Mr and Mrs X a compensatory payment of £142. This payment was in recognition that Mr and Mrs X's wrongly allocated quota was not identified at the same time as existing SAP producers and dealt with in 1997.

The Welsh Administration Ombudsman has agreed that this is a satisfactory outcome to this case.

GOVERNMENT OF WALES ACT 1998

**Report by the Welsh Administration Ombudsman
of the results of his investigation into a complaint made by**

Mr and Mrs X
Through: NFU Wales
Complaint against: the former Welsh Office Agriculture Department

The complaint

1. Mr and Mrs X complained that, because the former Welsh Office Agriculture Department (WOAD) incorrectly allocated their sheep quota, payment of their claim for Sheep Annual Premium (SAP) under the 1998 scheme was unreasonably delayed.

Investigation

2. A statement of complaint setting out the basis for the Ombudsman's investigation was issued on 21 March 2000. The statement is appended as an annex to this report. Comments were obtained from the Permanent Secretary of the National Assembly for Wales (the Permanent Secretary), to whom the responsibilities of WOAD were transferred on 1 July 1999. I have not put into this report every detail considered during the investigation; but I am satisfied that no matter of significance has been overlooked.

Background

3. The SAP scheme is fully funded by the European Union (EU), and aims to compensate producers for the extent to which the average market price for sheep during the marketing year falls below the basic price agreed by the EU. In June 1992 the EU decided to limit expenditure on the scheme by introducing individual limits (known as quota) per producer on eligibility for premium, effective from the 1993 scheme year. Premium is paid on all eligible animals for which quota is held and valid claims are made. The closing date for receipt by WOAD of claims under the 1998 scheme was 4 February 1998. Under the scheme, payment of premium is staged, with first and second advance payments each comprising 30% of the final rate, and a final balance. The final balance for the 1998 scheme was due to be paid in Spring 1999.

The Permanent Secretary's response

4. In a formal response to the statement of complaint on 23 May 2000, the **Permanent Secretary** explained that in 1993 United Kingdom Agriculture Departments (including WOAD) had, in a number

of cases, wrongly allocated sheep quota to trading titles rather than to individuals. Correction of this error was not undertaken in Wales until 1997 when WOAD set up small teams to re-allocate quota. Initially, cases were identified where allocations of quota to existing SAP claimants had been made to a trading title consisting of more than one name. It later came to light that there were additional cases where allocations from the national reserve to new SAP claimants had also been incorrectly made in the names of partnerships. These cases were not identified until the 1998 SAP payments were being processed. The Permanent Secretary said that Mr and Mrs X fell into this category, and that was why their case was not dealt with as part of the main re-allocation exercise in May 1997.

5. The Permanent Secretary explained that Mr and Mrs X first claimed SAP in 1993 as a 'sole producer'. As first time applicants they were allocated 90 units of quota from the 1993 national reserve. Between 1993 and 1997 their SAP claims were processed and paid without difficulty. In January 1998, they submitted their 1998 SAP claim to WOAD's Divisional Office at Caernarfon. The claim was not processed immediately as the supporting quota was identified as allocated to a trading title rather than to individuals. It was, therefore, filed with all other 1998 SAP claims which could not be processed at the time. The intention had been to deal with such cases once the main run of claims was processed.

6. The Permanent Secretary said that Mr and Mrs X's claim was not reviewed until October 1998. It then became clear that they had not previously been asked to complete a declaration form detailing their business structure (ie the apportioned ownership of their flock) which would have allowed the quota to be allocated correctly. Mr and Mrs X were not asked to complete that form until 16 April 1999; and they returned the completed form to the Divisional Office on 26 April. The Permanent Secretary said that because of conflicting priorities within the quota section, no action was taken until the outstanding claim came to light during processing of Euro compensation payments in July 1999. The 90 units of quota allocated to Mr and Mrs X's trading title were then shared equally between them, enabling their 1998 SAP payment to be processed. The Euro compensation element of Mr and Mrs X's claim, amounting to £164.57, was released on 10 September, and the entire 1998 SAP payment of £1,864.62 was released on 16 September. Mr and Mrs X had written to WOAD on 4 October asking for an explanation for the delay in payment and seeking an interest payment; and WOAD had replied on 3 November, apologising for the delay, but refusing to make an interest payment. A subsequent appeal by the NFU was also refused.

7. However, the Permanent Secretary went on to say that he had reviewed Mr and Mrs X's case in the light of the report of a previous investigation the Ombudsman had conducted (R.19/99-00). The Permanent Secretary considered that there were similarities between the two complaints; and he acknowledged that WOAD had unacceptably delayed reallocating Mr and Mrs X's quota. Consequently, he intended to apologise to Mr and Mrs X for WOAD's shortcomings in dealing with their case; and to offer a compensatory payment of £142 for the delay in reallocating their quota.

Findings and conclusion

8. As a result of the Ombudsman's intervention the National Assembly have reviewed Mr and Mrs X's

case. They now propose to apologise to Mr and Mrs X for WOAD's unacceptable delay in identifying and correcting their wrongly allocated quota; and to issue a compensatory payment of £142. I regard that as a satisfactory outcome and I look to the Permanent Secretary to act on the proposal as soon as is practicable.

Stanley J Drummond

Investigations Manager

Duly authorised under section 5(5) of Schedule 9 to
the Government of Wales Act 1998

16 June 2000

ANNEX

WELSH ADMINISTRATION OMBUDSMAN

Statement of Complaint: Case No: R.50/99-00

Complainant: Mr and Mrs X

Through: NFU Wales

Complaint against: the former Welsh Office Agriculture Department

1. Mr and Mrs X complain about delay by the former Welsh Office Agriculture Department (WOAD) and their successor body, the National Assembly for Wales Agriculture Department (NAWAD), in making payment of their claim for Sheep Annual Premium (SAP) under the 1998 scheme.
2. The following account is given:
 - i. On 27 January 1998, Mr and Mrs X submitted their claim for 1998 SAP to WOAD'S Caernarfon office.
 - ii. On 16 April 1999, WOAD wrote to Mr and Mrs X explaining that a recent review of quota allocations had shown that, initially, quota had been allocated incorrectly to their trading title; quota should have been allocated to the individuals who held an interest in the business. Mr and Mrs X were asked to clarify the structure of their business so that the necessary re-allocation could take place.
 - iii. On 1 July, NAWAD took over WOAD's role and responsibilities. In a letter dated 23 August, NAWAD confirmed that the quota had been reallocated and that they were now in a position to process Mr and Mrs X's claim. NAWAD calculated the amount due as £1864.62, plus a Euro Compensation payment of £164.57. Payment was made on 10 and 16 September.

- iv. On 14 September NAWAD wrote separately to Mr and Mrs X confirming their individual quota allocations. They reiterated that the original allocation of quota to the business's trading title had been a mistake on their part.
- v. Mr and Mrs X wrote to NAWAD on 29 September complaining about the delay in payment. In reply, on 3 November, NAWAD acknowledged that Mr and Mrs X had not been notified of the problem with their quota allocation until April 1999. They apologised for the delay but said that it was not their policy to make interest payments. They would, however, ensure that future payments were processed as quickly as possible.
- vi. On 1 December, NFU Wales wrote to NAWAD on Mr and Mrs X's behalf. Noting that the delay in releasing the 1998 SAP payment was a consequence of the need to reallocate quota because of WOAD's error, they asked again for interest to be paid.
- vii. On 8 February, NAWAD told the NFU Wales that they had fully considered Mr and Mrs X's case, but that there was no general entitlement in law to interest for delayed or late payment. NAWAD also said that there was an onus on the claimant to contact NAWAD at the earliest opportunity should any payment be delayed; Mr and Mrs X had not contacted them until after their claim had been paid in full.

3. Mr and Mrs X complain that because WOAD incorrectly allocated quota, payment of their 1998 SAP was unreasonably delayed. They seek interest on the amount eventually paid for the period of the delay.

4. The following departmental references have been quoted:

53/20/147 LIV/ELH
53/020/6045 SPSQ

53/20/0147/SPSQ/MWJ
53/020/6046 SPSQ

53/20/147/SUB/NJ

21 March 2000

Annex 3

Rt Hon Rhodri Morgan AM MP

Your ref: R50/99-00

Mr Michael Buckley
Welsh Administration Ombudsman

5th Floor
Capital Tower
Greyfriars Road
CARDIFF
CF10 3AG

Thank you for your Investigations Manager's letter of 16 June enclosing the final report on the complaint made by Mr and Mrs X that the former Welsh Office Agriculture Department incorrectly allocated their sheep quota and their 1998 Sheep Annual Premium claim was unreasonably delayed.

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 and Mrs X's case and acknowledged that there was an unacceptable delay in reallocating Mr and Mrs X's quota.

I am pleased that we have been able to make Mr and Mrs X a compensatory payment of £142 and that you have recognised this action as a satisfactory outcome to the complaint.

Thank you for bringing Mr and Mrs X's complaint to our attention.

Annex 4

Case Summary Mr A (R9/99-00)

Mr A has complained that WOAD delayed in seeking recovery of the amount due to him under the 1997 Suckler Cow Premium Scheme (SCPS) and that as a result he was unable to claim reimbursement from the quota leasing agent.

Case History

In 1996 Messrs A held 15.2 quota units. On 6 December 1996 Messrs A submitted a SCP 1996 claim for 7 cows only and were, therefore, in breach of the 70% usage rule. (To 'use' quota is defined as either to receive premium payment on it or to lease it out to another producer. In 1996 the producer was required to use at least 70% of their quota units. If the rule is broken the amount of quota unused during the year is withdrawn without compensation).

Messrs A wrote to the Divisional Office on 8 March 1997 asking for confirmation of their quota units.

The Divisional Office responded on 21 March 1997 confirming that the As held 15.2 quota units (Messrs A were not reminded that any breach of the usage rules in the previous year would mean that this figure could be reduced).

Messrs A submitted an application to transfer seven quota units to another producer in July 1997. (The As should have been aware from Scheme Literature that they would have been likely to lose quota because of their under usage in 1996 and that they should have taken this into account before leasing out quota.)

Messrs A originally submitted their **1997** SCP subsidy claim in October 1997, (this claim was not accepted as valid as it was incomplete - consequently it was returned for amendment). The claim was finally accepted on 5 December 1997. (Once a valid Suckler Cow subsidy claim has been submitted farmers are unable to make changes to their quota situation.)

Messrs A were notified on 13 November 1997 that quota would be withdrawn as a result of under-usage during the 1996 Scheme year unless an appeal was received within twenty days .

The Farming Union of Wales (FUW) submitted an appeal on Messrs As' behalf on 20 November 1997 on the basis that Messrs As' auctioneers had failed to lease out their spare quota due to a lack of demand. The appeal was turned down on 5 December (last day of the quota trading period) and they were advised that 8.2 units of quota would be withdrawn with effect from the 1997 scheme year.

The FUW appealed again on 9 December 1997, but the appeal was rejected and they were advised that Messrs A would be contacted by the Divisional Office regarding the recovery of his 1997 Suckler Cow payment.

The Divisional Office's Quota section notified the Subsidies section of the quota clawback on 21 January 1998 but, Messrs A were not notified that they were not entitled to payment for their 1997 SCP claim until 12 March 1999. As a result of the delays on the part of the Divisional Office in this case, no interest was charged and the Divisional Office apologised for this delay.

A further appeal was received from the FUW on 17 June 1999 which stated that the delay in notification of the overpayment meant that Messrs A could no longer seek compensation from the agent who dealt with the original quota transaction. The Divisional Office replied on 24 June 1999 confirming that recovery action would be pursued.

Messrs A subsequently repaid the sum of £1,275.81, reserving their rights to take further action against the Department.

The Department reviewed this case in the light of the Ombudsman's enquiries and has concluded that although Messrs A had taken a number of actions which contributed to their situation this case had not been dealt with as well as it should have been. Consequently the Permanent Secretary wrote to Mr P T A

apologising for the Department's shortcomings and offered a compensatory payment of £1,275.81 (equivalent to his 1997 Suckler Cow Premium claim).

The Permanent Secretary advised the Ombudsman :

- of our intention to compensate Messrs A
- of our intention to issue an instruction to Divisional Offices to remind those farmers who enquire about their quota units that the level may be reduced in line with the usage rules
- that the subsidy and quota sections in the Carmarthen Divisional Office had been amalgamated and that this action would go some way to ensuring the problems encountered by Messrs A would not be repeated.

Ombudsman's Conclusions

The Ombudsman has confirmed in his report that the remedial action undertaken by the Department was a satisfactory outcome to this case.

Annex 5

R.9/99-00

GOVERNMENT OF WALES ACT 1998

Report by the Welsh Administration Ombudsman of the results of his investigation into a complaint made by

Mr A

Complaint against: the former Welsh Office Agriculture Department

The complaint

1. Mr A complained that the former Welsh Office Agriculture Department (WOAD) delayed in notifying him of recovery of a payment made to him under the 1997 Suckler Cow Premium Scheme (SCPS).

Investigation

2. A statement of complaint setting out the basis for the Ombudsman's investigation was issued on 12 November 1999. The statement is appended as an annex to this report. Comments were obtained from

the Permanent Secretary of the National Assembly for Wales (the Permanent Secretary), to whom the responsibilities of WOAD were transferred on 1 July 1999. I have not put into this report every detail considered during the investigation; but I am satisfied that no matter of significance has been overlooked.

Background

2. The SCPS is fully funded by the European Union (EU) and aims to support the incomes of beef producers throughout the EU. During the relevant period, WOAD were responsible for the scheme's administration in Wales. Under the SCPS, a producer can submit only one claim per year and entitlement to premium is restricted to the number of cattle for which the producer holds premium rights (known as quota). Premium is paid on suckler cows forming part of a regular breeding herd used for rearing calves for meat production. Under regulations governing the scheme, quota can be acquired or disposed of by transfer or lease, provided the transactions take place in the same designated area. EU rules also require producers to 'use' a minimum percentage of their quota during scheme years (for the 1996 scheme year this was set at 70%) either by making a valid claim for SCP or by leasing quota to another producer. Where the usage rules are not met, WOAD are required to withdraw the amount of unused quota. In Guidance Notes published for the 1997 scheme, WOAD stated that the exercise to identify under usage during 1996 would take place in August and September 1997.

Sequence of events

3. In **October 1996**, Mr A, who already held 5 units of quota, acquired a further 10.2 units by permanent transfer. On **6 December**, he submitted a SCP premium claim for 7 cows for the 1996 scheme year to WOAD's Divisional Office at Carmarthen. On **8 March 1997**, Mr A wrote to WOAD asking for confirmation of the amount of quota he held. WOAD replied on **21 March** that his total allocation was 15.2 units; Mr A was invited to contact WOAD if he had any queries. On **24 September**, Mr A applied to the Divisional Office to lease 7 units of quota to another producer for one year.

4. On **13 November**, WOAD wrote to Mr A explaining that, because of the apparent under usage of his 1996 quota, they proposed to withdraw 8.2 units of quota with effect from the 1997 scheme year. Mr A was told that he could appeal against the decision, but must do so within 20 days. WOAD also said:

'.... If it is necessary to withdraw quota from you, it may mean that you do not have sufficient quota left to cover your intended 1997 Suckler Cow Premium Scheme Claim. There will be an opportunity to re-acquire quota to cover your 1997 premium claim during the remainder of the 1997 quota trading period - this is currently open and closes on Saturday, 6 December 1997. However, you will only be able to acquire quota if you have not already submitted your 1997 premium claim. Therefore, if you have not used sufficient quota in the 1996 scheme year and require all your quota for your 1997 premium claim, you should await the outcome of any appeal you submit against the withdrawal of quota **before** you submit your claim....

‘You should also note that any withdrawal of quota will reduce the amount which is available to you to dispose of by way of transfer or lease in the 1997 trading period. Therefore, you should, again, await the outcome of any appeal before deciding to dispose of quota in the 1997 trading period....’

5. On **20 November**, the Farmers Union of Wales (FUW) wrote to WOAD on Mr A’s behalf appealing against the proposed withdrawal of quota on the grounds that agents appointed by Mr A had been unable to lease out his excess quota, as intended, during 1996. On **5 December**, WOAD replied to FUW that lack of demand for quota could not be classified as ‘exceptional circumstances’; they confirmed that 8.2 units of quota would be withdrawn, leaving Mr A’s quota for the 1997 scheme year as 7 units. On the same day, Mr A submitted a SCP claim for 1997, for 8 cattle. On **8 December**, FUW wrote to WOAD drawing attention to WOAD’s letter of 21 March, which confirmed Mr A’s quota as 15.2 units (paragraph 3). They stated that:

‘[Mr A] also believed that the letter suggested - confirmed? - that their quota was held without prejudice or possible risk of forfeiture, especially in view of the date?’

6. On **21 January 1998**, the quota section at WOAD’s Divisional Office notified the subsidy section of the withdrawal of the 8.2 units of quota; they also pointed out that Mr A’s remaining 7 units had been leased out, so there was no quota available to pay his 1997 SCP claim. On **23 January 1998** WOAD replied to FUW’s letter of 8 December. They said, ‘Our [letter of 21 March] was merely confirming the total quota held under 1996 scheme year and the question of usage would not have been assessed at this time’. WOAD also pointed out that the transfer of 7 units of Mr A’s quota took precedence over his 1997 SCP claim, because notification of it was received earlier. They said that, as Mr A’s claim for SCP had already been processed, WOAD’s subsidy section would shortly be writing to him about that.

7. The subsidy section did not write until **12 March 1999**, at which time they requested repayment of £1,275.81 paid to Mr A in respect of 1997 SCP. WOAD said that if Mr A wished to make representations against that decision he must do so within 28 days. Mr A replied on **19 March** querying WOAD’s delay in attempting recovery of the claim. He said that the circumstances in which his quota had been clawed back had arisen as a result of negligence on the part of the agent who supplied the quota. He had reached an out-of-court settlement with the agent; but he had not sought to include in that settlement compensation for the 1997 SCP payment, which he had assumed was not to be recovered. He asked WOAD to reconsider their decision. WOAD replied on **30 April** apologising for the delay but saying that they had no alternative but to seek recovery. In a further letter on **24 June**, in response to a letter from FUW on Mr A’s behalf, WOAD reiterated that recovery was necessary but pointed out that no interest had been charged. Mr A repaid £1,275.81 to WOAD on **13 July**.

The Permanent Secretary’s response

8. In a formal response to the statement of complaint on 4 January 2000, the **Permanent Secretary** said that WOAD had acted correctly in recovering the improperly paid 1997 SCP payment. He also said that

the subsidy and quota sections had since been amalgamated, with the result that staff dealing with subsidy queries were now aware of problems regarding quota; and there was less likelihood of delays such as had occurred in Mr A's case. After considering the papers provided by the Permanent Secretary, the Ombudsman's investigating officer wrote to him pointing to some apparent failings in WOAD's handling of the under-usage exercise, and in the notification to Mr A of the claw-back of his quota; she sought his further comments on these matters. In reply, on 25 May, the Permanent Secretary wrote:

'[Mr A] originally submitted his 1997 SCP subsidy claim in October 1997, (this claim was not accepted as valid as it was incomplete, consequently it was returned to Mr A for amendment) the claim was finally accepted on 5 December 1997. Once a valid Suckler Cow subsidy claim has been submitted farmers are unable to make changes to their quota situation, - [Mr A] would therefore have been unable to purchase additional quota to support his claim had his initial application for subsidy been accepted as valid. But, I fully accept that the Divisional Office did not notify [Mr A] that his appeal was unsuccessful until the quota trading period had closed.

'[Mr A] submitted his application to transfer seven quota units to another producer in July [sic] 1997. [Mr A] should have been aware that he would have been likely to lose quota because of his under usage in 1996 and that he should have taken this into account before leasing out quota. However, I accept that the Divisional Office letter of 21 March 1997 may have led [Mr A] to believe incorrectly that he held sufficient quota to be able to lease out 7 units and to still support his subsidy application. I now intend to advise Divisional Offices that when responding to enquiries relating to the level of quota held that they must remind the respondents that their quota level may be reduced in line with the usage requirements.

'I accept that by October 1997 [Mr A] may have taken the view that he would not be penalised under the quota usage rules (as our literature suggested that this exercise would be undertaken in August and September). I therefore agree that we did not advise [Mr A] that he had lost quota because of his under usage in the 1996 Scheme Year quickly enough'.

9. The Permanent Secretary went on to say that, although Mr A had taken a number of actions which had contributed to his situation, he accepted that Mr A's case has not been dealt with as well as it should have been. Consequently, he proposed to offer Mr A payment of his 1997 SCP claim in recognition of the Divisional Office's shortcomings in handling his case.

Findings and conclusion

10. As a result of the Ombudsman's intervention the National Assembly have reviewed Mr A's case. They now propose to pay his 1997 SCP claim of £1,275.81 in full. I note, too, that Divisional Offices are to be advised to remind those who enquire about their quota that it may be reduced in line with usage

requirements; and that the subsidy and quota sections at the Carmarthen Divisional Office have been amalgamated so that staff dealing with subsidy queries are aware if there are quota problems, and there is less likelihood of a recurrence of the delays which occurred in this case. I regard that as a satisfactory outcome and I look to the Permanent Secretary to act on his proposals as soon as is practicable.

Stanley J Drummond

Investigations Manager

Duly authorised under section 5(5) of Schedule 9 to
the Government of Wales Act 1998

3 July 2000

ANNEX

WELSH ADMINISTRATION OMBUDSMAN

Statement of Complaint: Case No: R.9/99-00

Complainant: Mr A

Complaint against: the former Welsh Office Agriculture Department

1. Mr A complains about delay by the former Welsh Office Agriculture Department (WOAD) in notifying him of recovery of a payment made to him under the 1997 suckler cow premium scheme (SCPS).
2. The following account is given:
 - i) In or around March 1998, WOAD notified Mr A that quota which he had leased from an agent was to be clawed-back.
 - ii) Mr A appealed to WOAD against the claw-back of quota which, allegedly, was due to negligence on the part of the leasing agent. However, Mr A's appeal was rejected and he then negotiated an out of court settlement with the agent.
 - iii) On 12 March 1999, WOAD wrote to Mr A informing him that as a result of the claw-back he had no quota available for the 1997 SCPS. They asked him to repay £1275.81 which had already been paid to him under that scheme. They said that if he wished to make representations against that decision, he should do so within 28 days.
 - iv) Mr A replied to WOAD on 19 March. He complained that WOAD had not advised him at the time of the claw-back that repayment of premium received would also be necessary; nor had WOAD taken any steps, at that stage, to instigate recovery. Furthermore, as it had taken WOAD almost two years to notify him of recovery, he was no longer in a position to make a further claim against the agent and thereby recover the

amount claimed by WOAD.

v) On 30 April WOAD told Mr A that they were unable to reverse their earlier decision to recover the amount paid to him under the 1997 SCPS. WOAD acknowledged that there had been an inexplicably long delay in notifying Mr A of the recovery action but said that they had no alternative other than to recover the amount paid.

3. Mr A complains of delay on the part of WOAD in seeking recovery of the amount paid to him under the 1997 SCPS. He contends that, as a result, he is unable to claim reimbursement from the quota leasing agent. He seeks full redress.
4. The following departmental reference has been quoted:

55/54/29

12 November 1999

Annex 6

Rt Hon Rhodri Morgan AM MP

Your ref: R9/99-00

Mr Michael Buckley
Welsh Administration Ombudsman
5th Floor
Capital Tower
Greyfriars Road
CARDIFF
CF10 3AG

Thank you for your Investigations Manager's letter of 3 July enclosing the final report on the complaint made by Mr A that the former Welsh Office Agriculture Department delayed in seeking recovery of the amount due to him under the 1997 Suckler Cow Premium Scheme, and that as a result he was unable to claim reimbursement from the quota leasing agent.

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 As' case and has accepted that his case had not been dealt with as well as it should have been.

I can confirm that remedial action has been taken and staff in Divisional Offices have been advised to remind those farmers who enquire about their quota that it may be reduced in line with the usage requirements and that this action will ensure that the confusion which arose in Mr A's case should not be repeated.

I am pleased that we have been able to make Mr A a compensatory payment of £1,275.81 (equivalent to his 1997 Suckler Cow Premium claim) and that you have recognised this action as a satisfactory outcome to the complaint.

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

Annex 7

CASE SUMMARY MR X (Case No. R.31/99-00)

Mr X complained to the WAO, through Richard Livsey MP, that the former WOAD unreasonably refused payment of the Less Favoured Area (LFA) supplement due to his partnership under the 1998 Sheep Annual Premium Scheme (SAPS).

BACKGROUND

In addition to the annual SAPS payments, producers in the LFAs may qualify for a supplementary premium. A producer who qualifies for SAP, and holds LFA quota, can receive the LFA supplement on eligible sheep if:

- a. an IACS area aid application is lodged for the scheme year;
- b. at least 50% of the agricultural area of the holding used for farming is in the LFA; and
- c. the LFA portion of the holding is used for sheep production.

There is no definition in the EC legislation of when or for what period land must be held in order to count as part of the holding. For the purposes of administering the Scheme it has been decided that the holding will comprise all land entered on the producer's Integrated Administration and Control System (IACS) area aid application for the Scheme year in question (i.e. the 1998 area aid application for the 1998 Scheme).

CASE BACKGROUND

On 21 January 1998 a claim for Sheep Annual Premium in respect of 2,172 sheep was received from the family partnership comprising of approximately 514 hectares. The partnership members were Mr X

(father), Mr Y (son) and Mr Z (son).

On 14 May 1998 a letter was received from Messrs X, Y and Z informing us that the partnership would not be submitting a 1998 IACS area aid application as the partnership would be dissolved on 15 May 1998.

On 14 May 1998 separate 1998 IACS area aid applications were submitted by Mr Y and Mr Z respectively for their newly registered holdings (Mr X had retired from the farming business as from 15 May 1998.)

On 4 September 1998, the 1998 SAPS claim was processed only for payment of premium (not the LFA supplement) because a 1998 IACS area aid application had not been submitted by the claimant, i.e. the partnership of Messrs X, Y and Z. The Sheep Annual Premium (Amendment) Regulations 1997 require a SAPS LFA claimant to submit a relevant IACS area aid application in order that payment of the LFA supplement be made.

On 22 April 1999, Welsh Office officials sought the advice of MAFF on a number of case situations, including that of Messrs X, Y and Z, involving non-payment of LFA supplement due to relevant IACS area aid applications not being submitted. The advice received from MAFF policy advisers and their legal department supported the case for not paying the LFA supplement. Internal legal advice was also sought.

Richard Livsey MP submitted an appeal on behalf of Messrs X, Y and Z to Jon Owen Jones MP on 14 April 1999 and to Christine Gwyther AM on 6 July 1999. Replies were sent confirming that the SAPS regulations made it mandatory for LFA claimants to submit an IACS area aid application for the calendar year corresponding to the marketing year in which they claimed.

Further appeals were subsequently received from Richard Livsey MP, Mr X and Nick Bourne AM and our responses maintained our earlier position.

CONCLUSION

The partnership of Messrs X, Y & Z has been paid the 1998 SAPS premium in full but no member of this partnership has received LFA supplement.

The 1998 SAPS Notes for Guidance highlighted the requirement that for an LFA producer to qualify for LFA supplement a valid 1998 IACS area aid application must be submitted.

The claimants, Messrs X, Y and Z, who are the subject of this current appeal by Mr X, signed the declaration on the 1998 SAPS claim form submitted on 21 January 1998 confirming that they had read the Notes for Guidance and understood that it was their responsibility to make themselves aware of the rules of the Scheme.

The European law requirements in respect of applicants for LFA supplements are clear. LFA claimants must either indicate on their IACS form those parcels which are located in the LFA or if they are not otherwise required to submit an IACS they must make a specific declaration indicating the location of all the land they use "under whatever arrangements, indicating its area and detailing those parts which are located in the less-favoured area and are used for sheep ...production". Regulation 2700/93 authorises Member States to demand that the specific declaration be made by way of "area" aid application. This was done in the UK by the Sheep Annual Premium (Amendment) Regulations 1997 No. 2500 which made it mandatory for claimants of the LFA supplement to submit an IACS area aid application for the calendar year corresponding to the marketing year to which the claim relates.

As Mr X did not submit an 1998 IACS area aid application he is not entitled to SAPS LFA supplement in respect of his producer status under the partnership's 1998 SAPS claim.

In respect of Mr X's two sons that were in the partnership with him (ie Y and Z), recent legal advice is that each producer within a producer group (e.g. family partnership) can be considered separately as claimants of SAP LFA. The legal advice referred to is that of the Welsh Assembly's Office of the Counsel General (OCG) and does not necessarily reflect the opinion of the legal advisers to the Ministry of Agriculture, Fisheries and Food or the Scottish Executive Rural Affairs Department. However, we have subsequently received a view from independent Counsel that endorses the advice from OCG and NAWAD has therefore decided to proceed in line with OCG's advice. This means, in respect of **Y and Z** as producers within their own right under the partnership, we have determined that although the 1998 IACS area aid applications submitted by them were in respect of their new sole businesses, they met the necessary criteria and consequently **are entitled to their share of SAPS LFA supplement** as previous producers under the partnership.

OMBUDSMAN'S FINDINGS

The Ombudsman agrees that the proposal by NAWAD to pay LFA supplement to Mr X's two sons, apportioned to their share of the flock, is an equitable solution.

Annex 8

R.31/99-00

GOVERNMENT OF WALES ACT 1998

**Report by the Welsh Administration Ombudsman
of the results of his investigation into a complaint made by**

Mr X
Through:Mr Richard Livsey, CBE MP
Complaint against:the former Welsh Office Agriculture Department

The complaint

1. Mr X complained that the former Welsh Office Agriculture Department (WOAD) unreasonably refused payment of the Less Favoured Area (LFA) supplement due under the Sheep Annual Premium Scheme (SAP) 1998.

Investigation

2. A statement of complaint setting out the basis for the Ombudsman's investigation was issued on 11 January 2000. The statement is appended as an annex to this report. Comments were obtained from the Permanent Secretary of the National Assembly for Wales (the Permanent Secretary), to whom the responsibilities of WOAD were transferred on 1 July 1999. I have not put into this report every detail considered during the investigation; but I am satisfied that no matter of significance has been overlooked.

Background

3. The SAP scheme is fully funded by the European Union (EU) and aims to compensate producers for the extent to which the average market price for sheep during the marketing year falls below the basic price agreed by the EU. In addition to the annual premium, producers in specially designated less-favoured areas (LFA's) may qualify for a supplementary premium. The rules of the scheme are laid down in a variety of EU regulations which are directly applicable in Member States. In addition, the Sheep Annual Premium Regulations 1992 (as amended by the Sheep Annual Premium (Amendment) Regulations of 1994, 1995 and 1996) make provision for matters necessary for the proper implementation of the scheme in the United Kingdom (UK). Prior to 1 July 1999, WOAD were responsible for the administration of the scheme in Wales and for making premium payments on behalf of the EU in strict accordance with EU rules.

4. Current EU legislation defines a producer generally as an individual farmer who owns the flock and assumes on a permanent basis the risks and/or organisation of the rearing of at least ten ewes. A producer group is defined as any form of group, association or co-operation involving reciprocal rights and obligations between sheep producers. Producers claim premium as either an eligible producer or as members of a producer group. Since the 1992 marketing year each member of a producer group has been required to sign the group's claim form; and the group's claim has to state the number of animals brought to the group by each member.

5. The location of each producer's holding either within or outside the LFA has to be determined for the purposes of establishing:

- i. the producers eligibility for the additional LFA supplement; and
- ii. the quota ‘ring fence’ in which the producer’s holding is situated.

For both purposes, a holding means all production units managed by or made available to the producer in the UK. There is no definition in EU legislation of when or for what period land must be held in order to count as part of the holding. For the purposes of administering the scheme the UK Government decided that the holding comprises all land entered on the producers Integrated Administration and Control System (IACS) area aid application for the scheme year in question.

6. A producer who qualifies for SAP, and holds LFA quota, can receive the LFA supplement on eligible sheep if:

- i. an IACS area aid application is lodged for the scheme year;
- ii. at least 50% of the agricultural area of the holding used for farming is in the LFA; and,
- iii. the LFA portion of the holding is used for sheep production.

LFA status is personal to each individual producer. In the case of a producer group, where no member has a separate ‘production unit’, the 50% rule is applied to the group’s holding as defined above in order to determine whether the members of the group are LFA producers. It is assumed that all the land available to the partnership is available to each and every member of the group. Each member of the group will therefore have the same status, be it either LFA or non-LFA. As a producer’s holding may change from year to year with the acquisition or disposal of land, LFA status must be determined each year.

Sequence of events

7. On 21 January 1998, Mr X and his two sons, Mr Y and Mr Z claimed SAP for 1998 in respect of 2,172 sheep held by them as a family partnership. They apportioned ownership of one third of the flock (724 animals) to each partner. On 14 May, the partnership informed WOAD that they would not be submitting a 1998 IACS area aid application as the partnership would be dissolved on 15 May, due to Mr X’s retirement. On the same day Mr Y and Mr Z submitted separate 1998 IACS area aid applications for their respective registered holdings following the dissolution of the partnership. On 26 August, WOAD informed the partnership that they had authorised payment of SAP for 1998; but that they could not pay LFA because the partnership had not submitted a 1998 IACS area aid application.

8. On 14 April 1999, Mr X’s Member of Parliament (the MP) wrote to the Parliamentary Under Secretary of State at the Welsh Office enquiring why WOAD had withheld the LFA supplement from the partnership’s SAP claim. The Parliamentary Under Secretary replied on 30 April. He acknowledged that the partnership’s premium claim had been considered valid but said that officials did not appear to have the discretion to pay the LFA supplement in the absence of a valid IACS application. He added, however, that officials were examining a number of similar cases. They were consulting the Ministry of Agriculture, Fisheries and Food (MAFF), and taking legal advice on the matter. He told the MP that he

would write further once the outcome was known.

9. On 7 July, following the transfer of responsibility for agricultural affairs to the National Assembly, the MP wrote to the National Assembly's Agriculture and Rural Affairs Secretary asking whether the outcome of the consultation with MAFF and legal advisors was known. The Agriculture and Rural Affairs Secretary replied on 27 July; she said that the advice was very clear that European and domestic regulations did not allow for any waiver of the scheme requirements. Despite subsequent correspondence from Mr X, his MP and his Assembly Member, the National Assembly maintained that position.

The Permanent Secretary's response

10. In his response to the statement of complaint, the **Permanent Secretary** said that EU requirements in respect of applications for LFA supplement were clear. LFA claimants had to either indicate on their IACS form those holdings which were located in the LFA or, if they were not otherwise required to submit an IACS form, make a specific declaration indicating the location of all the land they used for sheep production. He explained that the EU authorised Member States to demand that the specific declaration be made by way of an 'area' aid application and that, in the UK, the Sheep Annual Premium (Amendment) Regulations 1997 No. 2500 made it mandatory for claimants of the LFA supplement to submit an IACS area aid application for the calendar year corresponding to the marketing year to which the claim relates. He pointed out that that requirement was highlighted in the 1998 SAPS Notes for Guidance. The Permanent Secretary said that, as Mr X had not submitted a 1998 IACS area aid application, he was not entitled to the LFA supplement in respect of his producer status under the partnership's 1998 SAPS claim.

11. However, in respect of Mr Y and Mr Z, the Permanent Secretary said that he had received recent legal advice that each producer within a partnership could be considered separately as a claimant to LFA. Mr Y and Mr Z could, therefore, be regarded as producers in their own right within the family partnership. That being so, he had determined that, although the 1998 IACS area aid applications they had submitted were in respect of their new sole businesses, they met the necessary criteria for payment of the LFA supplement. Consequently, they were entitled to their share of SAPS LFA as previous producers under the partnership. The Permanent Secretary said that, on confirmation that all other criteria had been met, the payments to Mr Y and Mr Z would be processed as soon as possible on an ex-gratia basis.

Findings and conclusion

12. As a result of the Ombudsman's intervention the National Assembly have sought legal advice and reviewed Mr X's case. They remain of the view that Mr X is not entitled to payment of LFA supplement because he did not submit a 1998 IACS area aid application. However, as a result of the legal advice received, they now propose to consider Mr Y and Mr Z as 1998 LFA claimants in their own right and, subject to other criteria being met, they propose to pay them the LFA supplement apportioned to their

share of the flock. That seems to me to be an equitable solution and I look to the Permanent Secretary to act on the proposal as soon as is practicable.

Stanley J Drummond

Investigations Manager

Duly authorised under section 5(5) of Schedule 9 to
the Government of Wales Act 1998

26 July 2000

ANNEX

WELSH ADMINISTRATION OMBUDSMAN

Statement of Complaint: Case No: R.31/99-00

Complainant: Mr X

Through: Richard Livsey CBE MP

Complaint against: the former Welsh Office Agriculture Department

1. Mr X complains, in respect of holding 52/208/39, that the former Welsh Office Agriculture Department (WOAD) unreasonably refused payment of the Less Favoured Area (LFA) supplement for 1998 under the Sheep Annual Premium (SAP) scheme.
2. The following account is given:
 - i. On 15 May 1998, with WOAD guidance and approval, Mr X transferred his holdings, including both cow and sheep quota, to his five sons, so that the partnership was split into five individual holdings.
 - ii. On 26 August 1998, WOAD notified the partnership that payment of SAP for 1998 had been authorised, but that LFA supplement could not be paid as no 1998 Area Aid Application under the Integrated Administration and Control System (IACS) had been submitted.
 - iii. In a letter to the Parliamentary Under-Secretary at the Welsh Office on 14 April 1999, on Mr X's behalf, Mr Richard Livsey MP said that Mr X had been advised not to sign the IACS form because the livestock quotas had been transferred on the division of the business.
 - iv. On 27 July, in the light of legal advice on the matter, the Assembly Secretary for Agriculture and Rural Development told Mr Livsey that the Sheep Annual Premium (Amendment) Regulation 1997 No 2500 made it mandatory for LFA claimants to submit an IACS form for the calendar year corresponding to the marketing year in which they claimed.
 - v. Mr X wrote to Assembly Secretary in September saying that, on the advice of the Welsh Office, the partnership had submitted an IACS form dated from 15th May 1997 until

midnight on the 15th May 1998. He said that he had received payment of SAP for that period, so questioned why the LFA supplement could not be paid. Also on the advice of the Welsh Office, three of his sons had submitted separate IACS forms on 15 May 1998 in respect of the transferred holdings, so that subsequent payments would not be delayed.

vi. WOAD replied on the 29th September. They said that the IACS year was not May to May, but corresponded to a calendar year; and they confirmed that it was a requirement that claimants submitted IACS forms in the year to which the claim related. As the partnership had not submitted an Area Aid Application in 1998 they were unable to authorise payment of the supplement. They had no discretion in the matter.

3. Mr X contends that his sons submitted IACS forms on 15 May 1998 in respect of the transferred holdings. He could not submit a 1998 IACS form in respect of the partnership because to do so would have meant making a false claim to secure payment twice on the same business.

Consequently, neither he nor his sons had received payment of the LFA supplement for 1998, which he estimated at £11,294. He seeks full redress.

4. The following departmental references have been quoted:

52/208/0039	52/208/0099	52/208/0092	52/208/0098
52/206/31	52/208/38	52/208/6031	SPSQ J 00914/99
CG 00118/99	AT 01605/99		

Annex 9

Rt Hon Rhodri Morgan AM MP

Your ref: R31/99-00

Mr Michael Buckley
Welsh Administration Ombudsman
5th Floor
Capital Tower
Greyfriars Road
CARDIFF
CF10 3AG

Thank you for your Investigations Manager's letter of 26 July enclosing the final report on the complaint made by Mr X that the former Welsh Office Agriculture Department unreasonably refused payment of the Less Favoured Area supplement due to his partnership under the 1998 Sheep Annual Premium Scheme.

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 X's case and has arrived at an equitable solution.

I am sorry that we are not able to pay the supplement to Mr X but I hope he will find it acceptable that we are able to pay the supplement to his two sons in respect of their share of the business as claimed under the 1998 Sheep Annual Premium Scheme. I am pleased that you have recognised this action as a satisfactory outcome to the complaint.

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