

**Dyddiad:** 14 Medi 2000  
**Amser:** 2.00pm - 4.20pm  
**Lleoliad:** Adeilad y Cynulliad Cenedlaethol, Bae Caerdydd

## **Cyflwyno Adroddiad yr Ombwdsmon a'r Ymatebion Drafft**

### **Rheol Sefydlog 21 - Y Drefn Gwyno**

1. Mae Rheol Sefydlog 21 yn ymdrin â'r drefn y dylid ei dilyn wrth ystyried adroddiadau Ombwdsmon Gweinyddiaeth Cymru a Chomisiynydd y Gwasanaeth Iechyd ar gyfer Cymru. Os bydd yr adroddiad yn datgan bod y cwynwr wedi dioddef cam neu galedi o ganlyniad i gamweinyddu, bydd gofyn i'r Ysgrifennydd Cynulliad gyflwyno adroddiad i'r Pwyllgor hwn cyn pen 20 niwrnod, ynghyd ag ymateb drafft i'r adroddiad yn nodi'r camau a gymerwyd neu'r camau y bwriedir eu cymryd.

2. Wedi i'r Pwyllgor ystyried yr ymateb, caiff ei gyflwyno i'r Prif Ysgrifennydd sy'n gyfrifol am hysbysu'r Ombwdsmon o'r camau a gymerwyd.

### **Y Cwynion**

3. Gofynnir i'r Pwyllgor ystyried adroddiadau gan yr Ombwdsmon mewn perthynas â:

- **Achos yr Ombwdsmon R50/99-00 (Mr a Mrs X)**

Mae manylion y gwyn hon wedi eu nodi yn atodiad 1. Mae copi o adroddiad yr Ombwdsmon yn atodiad 2, ac mae'r ymateb arfaethedig i'w anfon gan y Prif Ysgrifennydd at yr Ombwdsmon yn atodiad 3.

- **Achos yr Ombwdsmon: R9/99-00 (Mr A)**

Mae manylion y gwyn hon wedi eu nodi yn atodiad 4. Mae copi o adroddiad yr Ombwdsmon yn atodiad 5, ac mae'r ymateb arfaethedig i'w anfon gan y Prif Ysgrifennydd at yr Ombwdsmon yn atodiad 6.

- **Achos yr Ombwdsmon: R31/99-00 (Mr X)**

Mae manylion y gwyn hon wedi eu nodi yn atodiad 7. Mae copi o adroddiad yr Ombwdsmon yn atodiad 8, ac mae'r ymateb arfaethedig i'w anfon gan y Prif Ysgrifennydd at yr Ombwdsmon yn atodiad 9.

## Cynnig

4. Gwahoddir y Pwyllgor Amaethyddiaeth a Datblygu Gwledig i gytuno ar yr ymatebion drafft yn Atodiadau 3, 6 a 9 sydd i'w hanfon gan y Prif Ysgrifennydd at Ombwdsmon Cymru.

**Is-Adran Rheoli CAP**

**Medi 2000**

**Atodiad 1**

### **Crynodeb o Achos Mr a Mrs X (R50/99-00)**

Cwynodd Mr a Mrs X bod Adran Amaethyddiaeth yr hen Swyddfa Gymreig wedi dyrannu eu cwota'n wallus. O ganlyniad, bu oedi afresymol cyn talu eu Premiwm Blynnyddol Defaid (SAP).

### **Cefndir**

Ym 1993, dyrannodd Adrannau Amaethyddiaeth y DU gwota defaid yn wallus i Deitl Masnachu yn hytrach nag unigolion mewn nifer o achosion. Ni chywirwyd hyn tan 1997 pan sefydlwyd timau bychan gan Adran Amaethyddiaeth y Swyddfa Gymreig (WOAD) i adleoli'r cwota mewn achosion o'r fath. (Mae WOAD eisoes wedi cael ei beirniadu gan yr Ombwdsmon am yr oedi hwn mewn achos blaenorol.)

Ar y cychwyn, roedd achosion lle'r oedd dyraniadau cwota i unrhyw SAP presennol wedi cael eu gwneud i deitl masnachu a oedd yn cynnwys mwy nag un enw. Yn ddiweddarach daeth hi'n amlwg bod yna achosion lle'r oedd dyraniadau o'r gronfa genedlaethol i hawlwyd SAP newydd hefyd wedi eu gwneud yn anghywir yn enw partneriaethau. Ni sylwyd ar hyn tan oedd taliadau hawliadau 1998 yn cael eu prosesu. Roedd Mr a Mrs X yn perthyn i'r categori hwn a dyna pam na chafodd eu hachos hwy ei drin fel rhan o'r prif ymarfer teitlau masnachu a gynhaliwyd ym Mai 1997.

### **Cefndir yr Achos**

Hawliwyd SAPS gan Mr a Mrs X fel "cynhyrchwr unigol" am y tro cyntaf ym 1993.

Proseswyd a thalwyd am hawliadau Mr a Mrs X rhwng 1993 a 1997 heb unrhyw anhawster. Ym mis Ionawr 1998, cyflwynodd Mr a Mrs X hawliad SAPS 1998 ar gyfer 93 o famogiaid (lleihawyd y swm i 90 o famogiaid yn ddiweddarach ar ôl iddynt golli 3 o'r anifeiliaid). Ni phroseswyd yr hawliad hwn yn syth, oherwydd nodwyd bod y cwota cefnogol wedi ei ddyrannu i Deitl Masnachu yn hytrach nag unigolion. Ffeiliwyd yr hawliad, felly, gyda phob hawliad SAPS 1998 arall na ellid eu prosesu ar y pryd. Y bwriad oedd ymdrin ag achosion o'r fath unwaith y byddai'r prif hawliadau wedi'u prosesu.

Ni adolygwyd hawliad SAPS Mr a Mrs X hyd at Hydref 1998. Daeth yn amlwg na ofynnwyd iddynt

hwy gwblhau ffurflen yn datgan manylion sail eu busnes (h.y., perchnogaeth eu diadell) er mwyn galluogi dyrannu'r cwota'n gywir. Ni ofynnwyd i Mr a Mrs X gwblhau'r ffurflen hon tan 16 Ebrill 1999 a chafodd hon ei dychwelyd ar 26 Ebrill 1999. Ni chymerwyd unrhyw gamau ar ôl 26 Ebrill 1999 oherwydd bod blaenoriaethau a oedd yn gwrthdaro 'i gilydd o fewn adran y Swyddfa Gwota Ranbarthol.

Daeth hawliad SAPS Mr a Mrs X, na phenderfynwyd unrhyw beth yn ei gylch, i olau dydd pan roedd taliadau iawndal yr Ewro'n cael eu prosesu ym mis Gorffennaf 1999. Yr adeg hon, rhannwyd y 90 uned cwota a oedd wedi cael eu dyrannu i Mr a Mrs X yn gyfartal rhwng y ddau. Galluogodd hyn i'w Taliad Iawndal yr Ewro gael ei ryddhau ar 10 Medi 1999 ac i'w taliad SAP 1998 gael ei dalu ar 16 Medi 1999.

Ar 4 Hydref 1999, gofynnodd Mr a Mrs X am eglurhad dros yr oedi a fu cyn talu, a cheisiodd hawlio llog. Anfonwyd ateb at Mr a Mrs X ar 3 Tachwedd 1999, yn ymddiheuro bod y tl yn hwyr ond yn gwrthod y cais am log.

Ym mis Rhagfyr 1999, apeliodd Undeb Amaethwyr Cymru ar ran Mr a Mrs X. Anfonwyd ateb ar 8 Chwefror 2000 yn cydnabod bod oedi sylweddol yn y gwaith o brosesu'r hawliad. Nid oedd unrhyw hawl yn ôl y gyfraith i dderbyn llog ar daliadau hwyr.

## **Casgliad**

Mae Adran Amaethyddiaeth Cynulliad Cenedlaethol Cymru wedi derbyn beirniadaeth yr Ombwdsmon ynghylch yr oedi mewn ailddyrrannu cwota defaid i unigolion yn hytrach nag i deitlau masnachu o'r blaen.

Bu oedi yn nhaliadau Mr a Mrs X yn benodol gan nad oedd WOAD, gynt, wedi ymgymryd yn ddigon cyflym 'r ymarfer teitl masnachu. Daliwyd taliadau Mr a Mrs X yn ôl ymhellach gan na nodwyd cwota a ddyrannwyd yn anghywir i aelodau newydd y cynllun SAPS tan 1998.

O ganlyniad, cytunodd NAWAD i dalu tl iawndal o £142 i Mr a Mrs X. Cydnabyddiaeth oedd y tl hwn o'r ffaith na nodwyd cwota Mr a Mrs X, a ddyrannwyd yn anghywir, ar yr un pryd rhai cynhyrchwyr SAP presennol a derbyniodd sylw ym 1997.

Mae Ombwdsmon Gweinyddiaeth yr Alban wedi cytuno bod hyn yn ganlyniad teg i'r achos hwn.

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**Atodiad 2**

Cyhoeddir yr atodiad hwn yn yr iaith y'i derbyniwyd gan Gynulliad Cenedlaethol Cymru.

**R.50/99-00**

# GOVERNMENT OF WALES ACT 1998

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

Mr 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

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**Atodiad 3**

**Y Gwir Anrhydeddus Rhodri Morgan AC, AS**

Eich cyf: R50/99-00

Mr Michael Buckley  
Ombwdsmon Gweinyddu Cymru  
5<sup>ed</sup> Llawr  
Capital Tower  
Heol y Brodyr Llwydion  
CAERDYDD  
CF10 3AG

Diolch am lythyr eich Rheolwr Ymchwiliadau dyddiedig 16 Mehefin, yn amgáu'r adroddiad terfynol ynghylch y gwyn a wnaed gan Mr a Mrs X, sef bod Adran Amaethyddiaeth yr hen Swyddfa Gymreig wedi dyrannu eu cwota defaid yn anghywir a bod eu hawliad am Bremiwm Blynyddol Defaid 1998 wedi bod yn destun oedi afresymol.

Mae Cynulliad Cenedlaethol Cymru yn ddiolchgar am y gwaith a wnaed ac mae yn awr wedi ystyried ac asesu canfyddiadau eich Swyddog Ymchwilio. Rwy'n sylwi bod yr adroddiad yn dod i'r casgliad i Adran Amaethyddiaeth Cynulliad Cenedlaethol Cymru adolygu achos Mr a Mrs X oherwydd ymyriad yr Ombwdsmon, ac iddynt gydnabod bod oedi annerbyniol wedi bod wrth ailddyrrannu cwota Mr a Mrs X.

Rwy'n falch o ddweud ein bod wedi gallu cynnig iawndal o £142 i Mr a Mrs X, ac rwy'n falch eich bod yn cydnabod bod hyn yn ganlyniad boddhaol i'r gwyn.

Diolch am ddwyn ein sylw at gwyn Mr a Mrs X.

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## Atodiad 4

### Crynodeb Achos Mr A (R9/99-00)

Mae Mr A wedi cwyno bod WOAD wedi oedi cyn ceisio ad-dalu'r swm a oedd yn ddyledus iddo o dan SCPS 1997 ac na fu'n bosibl iddo hawlio ad-daliad oddi wrth yr asiant pryddlesu cwota o'r herwydd.

### Hanes yr Achos

Ym 1996, roedd gan y Meistri A 15.2 o unedau cwota. Ar 6 Rhagfyr 1996, cyflwynodd y Meistri A hawliad SCP 1996 am 7 buwch yn unig, gan dorri'r rheol defnydd 70% drwy wneud hynny. (Y diffiniad o "ddefnyddio" cwota yw naill ai derbyn tl premiwm amdano neu ei bryddlesu i gynhyrchwr arall. Ym 1996, roedd gofyn i'r cynhyrchwr ddefnyddio o leiaf 70% o'i unedau cwota. Os torrir y rheol, caiff yr hynny o'r cwota na ddefnyddiwyd mohono yn ystod y flwyddyn ei dynnu'n ôl heb iawndal.)

Ysgrifennodd y Meistri A at y Swyddfa Ranbarthol ar 8 Mawrth 1997 yn gofyn am gadarnhad ynghylch eu hunedau cwota hwy. Atebodd y Swyddfa Ranbarthol ar 21 Mawrth 1997 yn cydnabod bod gan y Meistri A 15.2 uned cwota (ni atgoffwyd y Meistri A y byddai torri'r rheolau defnydd yn y flwyddyn flaenorol yn golygu y gellid lleihau'r ffigur hwn).

Cyflwynodd y Meistri A gais i drosglwyddo saith uned cwota i gynhyrchwr arall ym mis Gorffennaf 1997. (Dylai'r Meistri A fod wedi bod yn ymwybodol oddi wrth Lenyddiaeth y Cynllun y byddent yn debygol o fod wedi colli cwota gan na ddefnyddiwyd digon ohono ganddynt ym 1996 a dylent fod wedi ystyried hyn cyn cynnig eu cwota ar bryddles.)

Cyflwynodd y Meistri A eu hawliad SCP **1997** gwreiddiol ym mis Hydref 1997. (Ni dderbyniwyd hwn fel hawliad dilys gan ei fod yn anghyflawn, ac fe'i dychwelyd yn ddiweddarach i'w gywiro.) Derbyniwyd yr hawliad yn y pen draw ar 5 Rhagfyr 1997. (Unwaith y mae hawliad cymhorthdal Buchod Sugno dilys wedi cael ei gyflwyno, ni all ffermwyr wneud newidiadau i'w sefyllfa gwota.)

Hysbyswyd y Meistri A ar 13 Tachwedd 1997 y byddai'r cwota'n cael ei dynnu'n ôl gan na ddefnyddiwyd digon ohono yn ystod 1996, oni bai fod apêl yn cael ei wneud o fewn ugain diwrnod.

Cyflwynodd Undeb Ffermwyr Cymru (FUW) apêl ar ran y Meistri A ar 20 Tachwedd 1997 yn seiliedig ar yr honiad bod arwerthyr y Meistri A wedi methu phrydlesu eu cwota sbr gan nad oedd digon o ofyn. Gwrthodwyd yr apêl ar 5 Rhagfyr (diwrnod olaf y cyfnod masnachu cwota) a chynghorwyd hwy y byddai 8.2 uned o gwota'n cael eu tynnu'n ôl, o 1997 ymlaen.

Apeliodd yr FUW drachefn ar 9 Rhagfyr 1997, ond gwrthodwyd yr apêl a chynghorwyd hwy y byddai'r Swyddfa Ranbarthol yn cynghori'r Meistri A ynghylch adennill ei daliad Buchod Sugno ar gyfer 1997.

Hysbysodd adran Gwota'r Swyddfa Ranbarthol yr adran Gymorthdaliadau o'r bwriad i adfachu cwtâu ar 21 Ionawr 1998, ond ni hysbyswyd y Meistri A nad oeddynt yn gymwys i dderbyn tl am eu hawliad SCP ar gyfer 1997 tan 12 Mawrth 1999. Oherwydd yr oedi o du'r Swyddfa Ranbarthol yn yr achos hwn, ni chodwyd llog ac ymddiheurodd y Swyddfa Ranbarthol am yr oedi.

Derbyniwyd apêl pellach oddi wrth yr FUW ar 17 Mehefin 1999 a oedd yn datgan na allai'r Meistri A wneud cais am iawndal oddi wrth yr asiant a fu'n ymdrin 'r gweithrediad cwota gwreiddiol bellach, oherwydd yr oedi a fu cyn hysbysu'r Meistri A o'r gor-daliad. Atebodd y Swyddfa Ranbarthol ar 24 Mehefin 1999, yn cadarnhau y byddid yn mynd ati i adennill yr arian.

Ad-daliwyd y swm o £1,275.81 yn ddiweddarach gan y Meistri A, a gadwodd eu hawl i ddwyn camau pellach yn erbyn yr Adran.

Gwnaeth yr Adran adolygiad o'r achos hwn yn wyneb ymholiadau'r Ombwdsmon ac mae wedi dod i'r casgliad nad oedd yr ymdriniaeth o'r achos hwn wedi bod cystal ag y dylai fod, er bod y Meistri A wedi gweithredu mewn nifer o ffyrdd a gyfrannodd at eu sefyllfa eu hunain. O ganlyniad, ysgrifennodd yr Ysgrifennydd Parhaol at Mr P T A yn ymddiheuro am fethiannau'r Adran, a chynigiodd iawndal o £1,275.81 (sef gwerth ei gais Premiwm Buchod Sugno 1997).

Cynghorwyd yr Ombwdsmon gan yr Ysgrifennydd Parhaol o'r canlynol:

- ei bod yn fwriad gennym gynnig iawndal i'r Meistri A;
- ei bod yn fwriad gennym ddsbarthu cyfarwyddyd i Swyddfeydd Rhanbarthol i atgoffa'r ffermwyr hynny sy'n holi am eu hunedau cwota y gall y lefel gael ei gostwng yn unol 'r rheolau defnydd;

- bod adrannau cymhorthdal a chwota Swyddfa Ranbarthol Caerfyrddin wedi cael eu huno ac y byddai hyn yn help garw i sicrhau na chi'r problemau a wynebwyd gan y Meistri A eu hail-adrodd.

## **Casgliadau'r Ombwdsman**

Mae'r Ombwdsmon wedi cadarnhau yn ei adroddiad bod y camau a gymerodd yr Adran wedi hynny yn ganlyniad boddhaol i'r achos hwn.

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**Atodiad 5**

Cyhoeddir yr atodiad hwn yn yr iaith y'i derbyniwyd gan Gynulliad Cenedlaethol Cymru.

**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.

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

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**Atodiad 6**

**Y Gwir Anrhydeddus Rhodri Morgan AC, AS**

Eich cyf: R9/99-00

Mr Michael Buckley  
Ombwdsmon Gweinyddu Cymru  
5<sup>ed</sup> Llawr  
Capital Tower  
Heol y Brodyr Llwydion  
CAERDYDD  
CF10 3AG

Diolch am lythyr eich Rheolwr Ymchwiliadau dyddiedig 3 Gorffennaf yn amgáu adroddiad terfynol y gwyn a wnaed gan Mr A bod Adran Amaethyddiaeth yr hen Swyddfa Gymreig wedi oedi wrth geisio adennill y swm a oedd yn ddyledus iddo o dan Gynllun Premiwm Gwartheg Sugno 1997, a'i fod wedi werthu hawlio ad-daliad gan yr aaiant prydlesu cwota o'r herwydd.

Mae Cynulliad Cenedlaethol Cymru yn ddiolchgar am y gwaith a wnaed ac mae yn awr wedi ystyried ac asesu canfyddiadau'ch Swyddog Ymchwilio. Rwy'n nodi bod yr adroddiad yn dod i'r casgliad bod Adran Amaethyddiaeth Cynulliad Cenedlaethol Cymru wedi adolygu achos Mr A ac na chafodd ei achos ei drin yn foddhaol.

Gallaf gadarnhau bod camau wedi eu cymryd i adfer y sefyllfa a bod staff Swyddfeydd Rhanbarthol wedi eu cynghori i atgoffa'r ffermwyr sy'n holi am eu cwota y gall gael ei leihau yn unol gofynion y defnydd ac y bydd hyn yn sicrhau na fydd y dryswch a gododd yn achos Mr A yn digwydd eto.

Rwy'n falch o ddweud ei'n bod wedi gallu cynnig iawndal o £1.275.81 i Mr A (swm sy'n cyfateb i'w gais Premiwm Buchod Sugno 1997) ac yn falch eich bod wedi derbyn bod hyn yn ganlyniad boddhaol i'r gwyn.

Diolch am ddwyn ein sylw at gwyn Mr A.

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**Atodiad 7**

## **CRYNODEB O ACHOS MR X (Achos Rhif R.31/99-00)**

Gwnaeth Mr X gwyn i'r WAO, drwy Richard Livsey AS, yn honni bod WOAD, fel yr oedd gynt, wedi gwrthod, a hynny'n afresymol, dalu tl atodol yr Ardal Lai Ffafriol (ALFf) oherwydd ei bartneriaeth o dan Gynllun Premiwm Blynyddol Defaid 1998 (SAPS).

## **CEFNDIR**

Yn ogystal 'r taliadau SAPS blynyddol, gall cynhyrchwyr yn yr Ardaloedd Llai Ffafriol fod yn gymwys am dl atodol. Gall cynhyrchwr sy'n gymwys i dderbyn SAP ac y mae ganddo gwota ALFf dderbyn tl atodol ALFf ar gyfer defaid cymwys os yw'n boddhau'r amodau a ganlyn:

- bod cais am gynllun cymorth ardal IACS wedi ei gyflwyno ar gyfer yr un flwyddyn;
- bod o leiaf 50% a ardal amaethyddol y daliad a ddefnyddir ar gyfer ffarmio yn yr ALFf; a
- bod rhan o'r daliad sydd yn yr ALFf yn cael ei ddefnyddio ar gyfer cynhyrchu defaid.

Nid oes diffiniad yn neddfwriaeth y CE ynghylch pa bryd neu am ba hyd y dylid dal tir er mwyn iddo gyfrif fel rhan o'r daliad. At ddibenion gweinyddu'r Cynllun, penderfynwyd y bydd y daliad yn cynnwys pob tir a nodwyd ar gais cymorth ardal IACS (system Weinyddu a Rheoli Integredig) ar gyfer blwyddyn berthnasol Cynllun (h.y. cais cymorth ardal 1998 ar gyfer Cynllun 1998).

## **CEFNDIR YR ACHOS**

Ar 21 Ionawr 1998, derbyniwyd hawliad am Breimiwm Blynyddol Defaid mewn perthynas 2,172 o ddefaid oddi wrth y bartneriaeth deuluol hon, oedd yn cynnwys oddeutu 514 o aceri. Aelodau'r bartneriaeth oedd Mr X (tad), Mr Y (mab) a Mr Z (mab).

Ar 14 Mai 1998, derbyniwyd llythyr oddi wrth y tri gr dan sylw, X, Y a Z yn ein hysbysu na fyddai'r bartneriaeth yn cyflwyno cais cymorth ardal IACS ar gyfer 1998 gan y byddai'r bartneriaeth yn cael ei diddymu ar 15 Mai 1998.

Ar 14 Mai 1998, cyflwynwyd ceisiadau cymorth ardal IACS ar wahn gan Mr Y a Mr Z ar gyfer eu daliadau cofrestredig newydd (roedd Mr X wedi ymddeol o'r busnes ffermio ar 15 Mai 1998).

Ar 4 Medi 1998, proseswyd cais SAPS 1998, ond am dl y premiwm yn unig (nid am dl atodol yr ALFf), gan nad oedd cais cymorth ardal IACS 1998 wedi cael ei gyflwyno gan yr hawliwr - h.y., partneriaeth Mr X, Mr Y a Mr Z. Mae'n ofynnol yn ôl Rheoliadau Premiwm Blynyddol Defaid (Diwygio) 1997 i hawliwr SAPS ALFf gyflwyno cais cymorth ardal IACS perthnasol fel y gellir gwneud taliad atodol yr ALFf.

Ar 22 Ebrill 1999, gofynnodd swyddogion y Swyddfa Gymreig farn MAFF am nifer o achosion, gan gynnwys achos Mr X, Y a Z, yn ymwneud sefyllfaoedd lle na thalwyd atodiad yr ALFf gan na chyflwynwyd y ceisiadau cymorth ardal IACS perthnasol. Roedd y cyngor a dderbyniwyd oddi wrth gynghorwyr polisi MAFF a'u hadran gyfreithiol yn cefnogi'r achos dros beidio talu atodiad yr ALFf. Gofynnwyd am gyngor cyfreithiol mewnol, hefyd.

Cyflwynodd Richard Livsey apêl ar ran Mr X, Y a Z i Jon Owen Jones AS ar 14 Ebrill 1999 ac i Christine Gwyther AC ar 6 Gorffennaf 1999. Anfonwyd atebion yn cadarnhau bod rheoliadau SAPS yn ei gwneud yn orfodol i hawlwr ALFf gyflwyno cais cymorth ardal IACS ar gyfer y flwyddyn galendr a oedd yn cyfateb i'r flwyddyn fasnachu yr oeddynt yn hawlio amdani.

Derbyniwyd apeliadau pellach yn ddiweddarach oddi wrth Richard Livsey AS, Mr X a Nick Bourne AC a chadwodd ein hymatebion ni at ein safbwynt blaenorol.

## **CASGLIAD**

Talwyd premiwm SAPS 1998 yn llawn i bartneriaeth Mr X, Y a Z, ond nid oes unrhyw aelod o'r bartneriaeth hon wedi derbyn atodiad ALFf.

Pwysleisiodd Nodiadau Canllaw SAPS 1998 bod gofyn i gais dilys am gymorth ardal IACS 1998 gael ei gyflwyno er mwyn i gynhyrchwyr ALFf fod yn gymwys am atodiad yr ALFf.

Arwyddodd yr hawlwr, Mr X, Y a Z, sy'n destun yr apêl presennol hwn gan Mr X, y datganiad ar ffurflen hawlio SAPS 1998 a gyflwynwyd ar 21 Ionawr 1998, yn cadarnhau eu bod wedi darllen y Nodiadau Canllaw ac wedi deall mai eu cyfrifoldeb hwy oedd sicrhau eu bod yn ymwybodol o reolau'r Cynllun.

Mae gofynion y gyfraith Ewropeaidd mewn perthynas ag ymgeiswyr am atodiadau'r ALFf yn glir. Mae'n rhaid i hawlwr ALFf nodi ar eu ffurflen IACS pa rannau sydd wedi'u lleoli yn yr ALFf neu os nad yw'n ofynnol iddynt gyflwyno IACS fel arall, mae'n rhaid iddynt wneud datganiad penodol yn dynodi lleoliad yr holl dir y maent yn ei ddefnyddio "o dan ba drefniadau bynnag gan ddynodi ei ardal a rhoi manylion y rhannau hynny sydd wedi'u lleoli yn yr ardal lai ffafriol ac a ddefnyddir ar gyfer cynhyrchu defaid". Mae Rheoliad 2700/93 yn awdurdodi Aelod Wladwriaethau i fynnu bod y datganiad

penodol yn cael ei wneud drwy gyfrwng cais cymorth "ardal". Gwnaed hyn yn y DU gan Reoliadau Premiwm Blyneddol Defaid (DIwygio) 1997 Rhif 2500, sy'n ei gwneud yn orfodol i hawlwr atodiad yr ALFf i gyflwyno cais cymorth ardal IACS ar gyfer y flwyddyn galendr sy'n cyfateb i'r flwyddyn farchnata y mae'r cais yn berthnasol iddi.

Gan na chyflwynodd Mr X gais cymorth ardal IACS ar gyfer 1998 nid oes hawl ganddo i dderbyn atodiad SAPS yr ALFf mewn perthynas 'i statws fel cynhyrchwr o dan hawliad partneriaeth SAPS 1998.

A throi at achosion dau fab Mr X a oedd yn rhan o'r bartneriaeth gydag ef (h.y., Y a Z), y cyngor cyfreithiol diweddar yw y gall pob cynhyrchwr o fewn grp cynhyrchu (e.e., partneriaeth teulu) gael ei ystyried ar wahn fel hawlwr SAP ALFf. Cyfeirir yma at gyngor cyfreithiol Swyddfa'r Cwnsler Cyffredinol (OCG) yn y Cynulliad Cenedlaethol, ac ni adlewyrchir yn angenrheidiol farn cynghorwr cyfreithiol y Weinyddiaeth Amaeth, Pysgodfeydd a Bwyd nac Adran Materion Gwledig Gweithrediaeth yr Alban. Ers hynny, fodd bynnag, derbyniasom farn oddi wrth Gwnsler annibynnol sy'n cadarnhau cyngor OCG ac mae Adran Amaethyddiaeth Cynulliad Cenedlaethol Cymru wedi penderfynu bwrw ymlaen yn unol chyngor OCG, felly. Golyga hyn ein bod wedi pennu, mewn perthynas ag **Y a Z** fel cynhyrchwr annibynnol o dan y bartneriaeth, eu bod wedi bodloni'r meini prawf angenrheidiol er bod y ceisiadau cymorth ardal IACS ar gyfer 1998 a gyflwynwyd ganddynt mewn perthynas 'u busnesau newydd fel unigolion. O ganlyniad, **mae hawl ganddynt i dderbyn eu rhan o atodiad SAPS yr ALFf fel cynhyrchwr blaenorol o dan y bartneriaeth.**

Mae'r Ombwdsmon yn cytuno bod cynnig Adran Amaethyddiaeth Cynulliad Cenedlaethol Cymru i dalu tl atodol i feibion Mr X, yn rhanedig yn ôl eu cyfran hwy o'r ddiadell, yn ateb teg.

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**Atodiad 8**

Cyhoeddir yr atodiad hwn yn yr iaith y'i derbyniwyd gan Gynulliad Cenedlaethol Cymru.

**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.

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 15<sup>th</sup> May 1997 until midnight on the 15<sup>th</sup> 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 29<sup>th</sup> 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  
52/206/31  
CG 00118/99

52/208/0099  
52/208/38  
AT 01605/99

52/208/0092  
52/208/6031

52/208/0098  
SPSQ J 00914/99

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**Atodiad 9**

**Y Gwir Anrhydeddus Rhodri Morgan AC, AS**

Eich cyf: R31/99-00

Mr Michael Buckley  
Ombwdsmon Gweinyddu Cymru  
5<sup>ed</sup> Llawr  
Capital Tower  
Heol y Brodyr Llwydion  
CAERDYDD  
CF10 3AG

Diolch am lythyr eich Rheolwr Ymchwiliadau dyddiedig 26 Gorffennaf, yn amgáu'r adroddiad terfynol ynghylch y gwyn a wnaed gan Mr X, sef bod Adran Amaethyddiaeth yr hen Swyddfa Gymreig wedi gwrthod talu tâl atodol yr Ardal Lai Ffafriol a oedd yn ddyledus i'w bartneriaeth ef o dan Gynllun Premiwm Blynyddol Defaid 1998, a hynny'n afresymol.

Mae Cynulliad Cenedlaethol Cymru yn ddiolchgar am y gwaith a wnaed ac mae yn awr wedi ystyried ac asesu eich canfyddiadau fel Swyddog Ymchwilio. Rwy'n sylwi bod yr adroddiad yn dod i'r casgliad i

Adran Amaethyddiaeth Cynulliad Cenedlaethol Cymru adolygu achos Mr X o ganlyniad i ymyriad yr Ombwdsmon, a bod y sefyllfa bellach wedi cael ei datrys yn deg.

Mae'n flin gennyf nad yw'n bosibl i ni dalu'r tâl atodol i Mr X, ond gobeithiaf y bydd y ffaith ein bod yn gallu cynnig y tâl i'w feibion mewn perthynas â'u cyfran hwy o'r busnes fel y'i hawliwyd o dan Gynllun Premiwm Blynyddol Defaid 1998 yn dderbyniol ganddo. Rwy'n falch eich bod wedi cydnabod bod gweithredu fel hyn yn ffordd foddhaol o gau pen y mwdwl.

Diolch am ddwyn ein sylw at gwyn Mr X.