

Local Government and Public Services Committee

Date: 13 October 2004

Venue: National Assembly for Wales, Cardiff Bay

Title: Welsh Administration Ombudsman Case R.33/02-03

Purpose

1. To provide the Committee with an opportunity to consider the First Minister's proposed response to the Welsh Administration Ombudsman's report into her investigation of case reference R.33/02-03.

Recommendations

2. That the Committee agrees the First Ministers proposed response.

Summary

3. The Welsh Administration Ombudsman has reported on an investigation into a complaint made by Mr X that the Assembly was maladministrative in the handling of complaint made about an alleged delay in notifying him of the outcome of an appeal made under the National Health Service (Pharmaceutical Services) Regulations 1992 for the relocation of a pharmacy. The Ombudsman has not investigated the alleged delay itself only the way in which the subsequent complaint made to an Assembly Complaints Officer was handled.

4. The Ombudsman has found that correspondence received from Mr X in the Complaints Officer's absence was not drawn to the Officer's attention; exchanges of correspondence between both parties were not received by either party; and, when the latter was drawn to the attention of the Complaint Officer, it was not acted on immediately.

Ombudsman Recommendations

5. The Ombudsman has recommended that

I. The Assembly review its complaint procedure and consider whether there are any measures that can be put in place to monitor complaints through the complaint procedure. That review was already planned and is underway.

II. The Assembly review its procedures for the receipt and distribution of internal and external post for the resolution of any failings that might be identified. The Permanent Secretary has agreed to examine whether there are any lessons to be learnt from this case.

6. During the course of the investigation the Permanent Secretary expressed considerable concern that the area in which the Assembly failed Mr X was at the point at which the complaint was passed to an Assembly Complaints Officer. As custodians of the Assembly's Code of Practice on Complaints the expectation is that any Complaints Officer should be exemplary in their handling of a complaint.

7. The Permanent Secretary has accepted and apologised for failings in the Assembly's handling of Mr X's complaint by the Complaint Officer and, as invited by the Ombudsman, has made an ex-gratia payment of £100 to Mr X in recognition of the time, inconvenience and postage costs incurred

Financial Implications

8. The Committee is not being asked to make any expenditure decision.

Cross Cutting Themes

9. None.

Action for Subject Committee

10. The Committee is invited to consider and agree the First Ministers proposed response.

Name Sue Essex

Minister for Local Government and Public Services

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Rt Hon Rhodri Morgan AM

First Minister/Prif Weinidog Cymru

Ms Ann Abraham

Welsh Administration Ombudsman

Millbank Tower

Millbank

London SW1P 4QP

Our Ref:

Your Ref:

October 2004

The Local Government and Public Services Committee considered your report of the investigation into case reference R.33/02-03 at their meeting on 13 October.

You have upheld a complaint made by Mr X that the Assembly were maladministrative in the handling of Mr X's complaint about an alleged delay in notifying him of the outcome of an appeal made under the National Health Service (Pharmaceutical Services) Regulations 1992 for the relocation of a pharmacy. I know that the Permanent Secretary is concerned that the area in which we failed Mr X is one where the handling of a complaint should have been exemplary. I share that concern and would like to take this opportunity to add my apology to those extended to Mr X for the failings that you have identified. I am satisfied that the review which you recommended of the National Assembly for Wales' Code of Practice

on Complaints is underway and with the Permanent Secretary's undertaking to examine whether there are any lessons to be learnt from this case.

It is always a matter of concern when your Office upholds a complaint of maladministration on the part of the National Assembly for Wales or, indeed, makes any adverse comment about the way in which we serve the people of Wales. I attach great value to the work of your Office. It benefits not only those whose complaints you investigate by seeking a remedy or redress for any injustice you have found, it also benefits the public body concerned. The Assembly is a learning organisation, constantly striving to improve the services it provides to the people of Wales. Identifying failures in the way in which we deliver those services not only gives us the opportunity to put matters right but directs us to look at the point of failure to ensure safeguards can be put in place to prevent a recurrence.

I trust that we will not see a repeat of the failings that you have identified in the course of this investigation.

R.33/02-03

Government of Wales Act 1998

Report by the Welsh Administration Ombudsman of an

Investigation into a complaint made by Mr X

Complaint against: The National Assembly for Wales

The complaint

1. Mr X complained that the National Assembly for Wales (the Assembly) were maladministrative in their handling of a complaint he made about delay in notifying him of the outcome of an appeal made under the National Health Service (Pharmaceutical Services) Regulations 1992.

Investigation

2. The statement of complaint setting out the basis for the Ombudsman's investigation was issued on 5 June 2003. The statement is appended as an annex to this report. Comments were obtained from the Permanent Secretary of the Assembly (the Permanent Secretary) and relevant documents were examined. I have not put into this report every detail investigated, but I am satisfied that no matter of significance has been overlooked.

The Assembly's Complaints Procedure

3. In 2000, the Assembly issued a Code of Practice on Complaints (the Code), which sets out their internal arrangements for considering complaints about actions and failures on the part of the Assembly. Part 1 of the Code contains a statement that it does not provide for review of the substance of decisions taken by the Assembly acting properly within their legal powers. Other exemptions to the Code are also defined. Part 2 of the Code sets out the Assembly's complaints procedure, which comprises three states of review. A first letter of complaint should be considered by the receiving official, and then referred for a full review by the relevant line manager (normally at least Head of Branch level); if the review identifies any errors or omissions, they should be addressed immediately. The Code provides that the complainant should receive a letter of apology, redress and explanation from an Assembly official with management responsibility for the area concerned (usually the Head of Branch). The letter should also enclose information on the Assembly's complaints procedure and give the details of a contact point (a senior line manager, typically Head of Division), should the complainant have any further concerns or queries. The Code then provides for a second stage where any further letter of complaint should be examined by a senior line manager (again, normally a Head of Division). The Head of Division will review the first reply and respond in accordance with the timetable set out in the Code (paragraph 5 below).

4. For the third stage, where a complainant is still not satisfied that their complaint has been fully investigated and addressed, and the complaint is covered by the provisions of Part 1 of the Code, they may ask for their complaint to be put to a complaints panel (the panel). The panel consists of a Chair, who is independent of the Assembly, and two senior Assembly officials (normally Group Directors), who are independent of the area in which the complaint arose. The Code provides that one member of the panel will review the complaint and put his or her conclusions to the full panel for consideration, and no complaint can be dismissed without the agreement of the Chair. The

Chair should then send a report to the Group Director for the area from which the complaint arose, who in turn, should send a response to the complainant either advising them of any action, apology or redress that the panel has concluded is appropriate, or that there is no more that the Assembly can do to put matters right.

5. The timescale for the process, laid out under Section 2.5 of the Code, includes:

‘ ...

‘All written complaints which warrant more than a simple explanation or apology will be acknowledged and complainants told that they will receive a response as soon as possible and normally within 15 working days of the receipt of the complaint...

‘..Where a response cannot be provided within 15 working days, an interim reply will be sent with an undertaking to provide a full reply by a date specified in the letter.

‘Where a complaint is not resolved at this stage the same approach to deadlines will apply to further

stages. Should a complaint proceed as far as the complaints panel... the complainant will be notified of the appointment of the panel within 15 days of the receipt of the request that a panel consider the complaint.

‘Delay in considering a complaint may be considered to be maladministration.’

Sequence of events and correspondence

6. On 24 March 2001, Mr X wrote to the Assembly to appeal against a decision by his Local Health Authority to refuse permission for the relocation of his pharmacy contract. On 15 October, the Assembly wrote to Mr X turning down his appeal. On 14 June 2002, Mr X wrote to the Primary and Community Health Division of the Assembly (the Division) to complain that there had been a delay in informing him of the outcome of the appeal. He said clearly that his complaint was not about the decision reached but about the time taken to inform him. On 1 July, an official (who I refer to as Officer A) of the Pharmacy Branch (the Branch) of the Division, replied to Mr X on behalf of the Assembly. In regard to Mr X’s complaints of delay, officer A said that it was vital that the Assembly make sure that the contents of decision letters were accurate in terms of the regulatory requirements; production of the letters was consequently a lengthy process. On 26 July, Mr X wrote to Officer A. he said that Officer A had not offered any credible explanation of why the issue of the appeal letter had taken so long. Mr X referred to the Assembly’s complaints procedure, and asked for his complaint to be referred to a ‘higher level’. On 13 August, Officer A sent a suggested draft reply to another official within the branch, who I refer to as Officer B, for consideration. Officer A said that as Mr X had asked for referral to a higher level, he thought the reply to Mr X should be sent by the Head of Branch.

On 19 August, Officer A sent an e-mail to Mr X to acknowledge his letter and apologise for the delay in replying. Officer A said that a senior colleague would be replying shortly. Then, on 30 August, the Head of Branch replied to Mr X that the Assembly’s appeals unit dealt with a large number of appeals which were progressed simultaneously, and set out the drafting process the Assembly employed for the production of appeal letters. She also said that the Assembly’s decision on Mr X’s appeal was reached just at the start of the main holiday period in July and August, which had extended the drafting period. The Head of Branch told Mr X that, if he remained dissatisfied, he could invoke the Assembly’s complaints procedure. She said that she had enclosed a copy of information taken from the Assembly’s web site, which, under section ‘other Means of Complaint’, highlighted the options open to Mr X. [NB: the Assembly’s file bears a copy of the document, which is entitled ‘Complaining about Assembly Member’s Standards of Conduct – How to do it’. It does not contain any specific information of use in Mr X’s situation; other than to say that the Assembly’s Permanent Secretary or the Ombudsman may be able to help.]

7. On 5 September, Mr X wrote to the Head of Branch expressing dissatisfaction with her reply. He said that while her letter had referred to enclosing information about the Assembly’s complaints procedure, it had been omitted and he had been unable, therefore, to make use of it. He said he would still like to proceed with the Assembly’s complaints procedure. On

12 September, the Head of Branch wrote to Mr X and acknowledged receipt of his letter. She told him that they had reached the further review stage of the complaints procedure, which gave him the opportunity to have his complaint considered by the Head of Division, and that the papers had been passed to him for review. She added that Mr X would have the Head of Division's response by 27 September. She also said that she had enclosed a leaflet which set out, in full, the Assembly's internal complaints procedure and which had been omitted from her previous letter.

8. The Assembly's file indicates that on 25 September, Officer A referred a draft reply, prepared for the Head of Division's signature and dated 23 September, to another Assembly official for comment. Officer A indicated that the reply had to be sent to Mr X, by the Head of Division, on 27 September. A hand-written note on the covering minute indicates that the draft letter, along with a comment that it appeared 'fine', was returned to Officer A on 26 September. It is not clear from the Assembly's file when the letter was actually signed by the Head of Division and then posted to Mr X. However, the letter Mr X received from the Head of Division was still dated 23 September. The Head of Division told Mr X that he had reviewed the correspondence and that he understood the issue to be the delay between the Assembly reaching a decision on Mr X's appeal on 15 July 2001, and the issue of the decision letter on 15 October 2001. The Head of Division said that he could see no evidence that Mr X's appeal had suffered any unusual delay. The Head of Division said that while he accepted that Mr X may have criticisms of the systems used by the Assembly, they had been applied consistently and in complete accordance with the procedures laid down for similar cases.

9. On 3 October, Mr X wrote to the Head of Division. He complained that although the Head of Division's letter had been dated 23 September, it had not been posed until 30 September and had been received on 1 October. Mr X said that it was 'typical of the lack of consideration shown to my complaint', and complained that the Assembly had taken far longer to reply to letters than the time allowed in complaints process. Mr X complained, too, that promised information had failed to be included. He said that he did not accept that he should have had to wait three months to be told the outcome of his appeal, as the contents of the decision letter were largely routine. Mr X said that the Assembly had failed to offer him a satisfactory explanation for the delay and he asked for his complaint to be considered by a panel in accordance with the Code (paragraph 4 above). On 7 October, Officer A wrote to Mr X and acknowledged his letter. Officer A also sent a copy of the papers relating to Mr X's appeal and complaint to the Assembly's Complaints Officer (the Complaints Officer), accompanied by a memo which highlighted Mr X's request for his complaint to be considered by a panel. The memo also referred to a telephone conversation Officer A had had with the Complaints Officer that morning. He asked the Complaints Officer to advise him whether the complaint should be taken to a panel and, if so, who should take that forward. A hand-written notation on the memo indicates that the Complaints Officer received the papers on 8 October.

10. On 14 October, Officer A sent an e-mail to the Complaints Officer which asked about progress on the case, as he understood that she had been due to discuss Mr X's complaint with her line manager. The Complaints Officer replied on 17 October and apologised for the delay in doing so. She told Officer A that she did not think that the Assembly had any alternative but to convene a panel if that was what Mr

X wanted. She said that she would be writing to Mr X to offer him a panel. She also asked Officer A to confirm some details about the drafting process Mr X's appeal letter had undergone. Also on 17 October, the Complaints Officer sent a letter of introduction to Mr X. She said that she had had an opportunity to read through the papers and had noted that he had expressed a number of concerns about the way in which his application was dealt with. She asked Mr X if, before the panel was convened, he could confirm that he wished to confine the panel's review to the 'undue and unnecessary delay in informing him of an appeal decision'. [NB: Mr X says that he did not receive this letter]. On 11 November, Officer A sent an e-mail to the Complaints Officer which provided information about the drafting stages Mr X's appeal letter had passed through.

11. On 21 November, Mr X wrote to Officer A complaining that, since Officer A's acknowledgement of 7 October, he had heard nothing further about his request for a panel. He referred to the provisions and timescale set out in part 2 of the Code (paragraph 5 above), and said that it was more than six weeks since the Assembly had received this request. Mr X added that it was over five months since he had first complained to the Assembly, and he did not feel that the Assembly were dealing with him in a serious and considerate manner. He asked Officer A to bring his letter to the attention of the complaint panel, 'if indeed it has been appointed'. [NB: The Assembly's file copy of this letter indicates that it was date stamped received on 21 November. It also bears a hand-written note, which appears to be in the Complaints Officer's handwriting, but which is not signed or dated.] On 22 November, Officer A wrote to Mr X and acknowledged receipt of his letter. He told Mr X that he had passed it to the Complaints Officer and had asked her to contact Mr X as a matter of urgency. He also gave Mr X the Complaints Officer's contact details. Also on 22 November, Officer A sent a copy of Mr X's letter, and his acknowledgement, to the Complaints Officer. Officer A asked her to contact Mr X as a matter of urgency.

12. On 3 December, having heard nothing further, Mr X wrote to the Complaints Officer. He said that it was two months since he had asked for his complaint to be considered by a panel, yet he had heard nothing. He continued: 'If it is your intention to treat my complaint with utter contempt and do nothing to further it then please inform me at once so that I may seek other remedies. I am sure that you will realise that you have broken all the guidelines laid down in your protocol'. On 5 January 2003, Mr X wrote to the Ombudsman and complained about the delay by the Assembly in dealing with his complaint. On 8 January, a member of the Ombudsman's staff telephoned the Complaints Officer to enquire about the position with Mr X's complaint. The Complaints Officer said that she would check the position and call back.

On 15 January, having heard nothing further, a member of the Ombudsman's staff again telephoned the Complaints Officer. The Complaints Officer said that, having checked the file, it appeared that she had had no reply from Mr X to her letter of 17 October (paragraph 10 above). The Complaints Officer said that she had only just discovered Mr X's letter of 3 December, which appeared to have been placed on file in her absence (on sick leave), and had remained unanswered. The Complaints Officer agreed to write to Mr X and send him a further copy of her letter of 17 October.

13. On 28 January, the Complaints Officer wrote to Mr X and referred to her recent contact with the

Ombudsman's staff. She told Mr X that it had become apparent that he had not received her letter of 17 October, a further copy of which she enclosed, and that his letter of 3 December had been placed on file during her absence from the office. She apologised to Mr X for 'a most regrettable error' and assured him that matters would be expedited once he confirmed the complaint that he wished the panel to consider. On 29 January, Mr X wrote to the Complaints Officer. He said that despite his understanding from the Ombudsman's staff that the Complaints Officer would contact him, he had heard nothing further. Mr X asked whether Officer A had forwarded his letter of 21 November to Complaints Officer, as he had said he would (paragraph 11 above). Mr X said that it was almost four months since he had made his request for his complaint to be considered by a panel and seven and a half months since he had initiated his complaint. He said he should like the panel to consider the delay in informing him of the appeal decision and the manner in which his complaint had been dealt with. Mr X asked the Complaints Officer to deal with his request as a matter of urgency and inform him of what action she intended taking. On 30 January, having by then received the Complaints Officer's letter of 28 January, having by then received the Complaints Officer's letter of 28 January, Mr X wrote to her by e-mail. He said that her letter would have crossed in the post with his of 29 January. He asked her to let him know if she required any further information other than that included in his letter. [NB: the copy of this e-mail on the Assembly's file indicates that the Complaints Officer printed it off on 30 January.]

14. On 25 February, having heard nothing further, Mr X wrote to the Complaints Officer. He enclosed copies of his letter of 29 January and his e-mail of 30 January, and asked the Complaints Officer to inform him what action was being taken with his complaint. On 6 March, having again heard nothing further, Mr X wrote to the Complaints Officer. He asked her to confirm whether she had received his previous correspondence, and whether she intended replying to his letters. He said that if he did not hear anything within the next five working days, he would assume that she had no intention of proceeding with his complaint and he would contact the Ombudsman. On 18 March, Mr X wrote to the Ombudsman. On receipt of this on 21 March the Ombudsman's staff contacted the Complaints Officer by telephone that day. She confirmed that she had received Mr X's e-mail of 30 January and that no acknowledgement or response had been sent. There was no trace of any of Mr X's other correspondence but she undertook to check further and get back to this Office. She replied by e-mail on 3 April to explain that the search had not revealed any correspondence from Mr X. She remarked that previously there had been other officers of the same name working for the Assembly but since this was no longer the case she was at a loss to explain what had happened to it. In order to take matters forward she suggested that another Assembly Complaints Officer might be best placed to handle this case, provided Mr X and this Office were content with this suggestion. As a result this Office contacted Mr X that day to discuss the situation. His immediate reaction was that he had lost faith in the Assembly process and wanted the Ombudsman to consider his complaint in full. His papers were received on 7 April. The outcome of the assessment was a Statement of Complaint on one aspect of the matters raised with this Office. This was sent to the Permanent Secretary on 5 June. Subsequently this Office was contacted by the senior Complaints Officer about the need for a panel as they had heard nothing since making their earlier offer apart from the receipt of the Statement of Complaint. Following contact with Mr X, it was confirmed on 22 July that he did not want to pursue this further.

The Assembly's response to the complaint

15. In his comments the Permanent Secretary said that it was of considerable concern that the area in which the Assembly had failed Mr X was the point from which his complaint was passed from the Division to the Complaints Officer. He said that by the very nature of their role, he would expect any Complaints Officer to be exemplary in their handling of a complaint, but that that had obviously not happened on this occasion. He attributed that to a number of factors. First, that Mr X's letter of 3 December had been mis-filed when the Complaints Officer had been on sick leave [that is placed on the correct file but the file not brought to her attention on her return], rather than more appropriate action being taken. Second, that the Complaints Officer had failed to follow up Mr X's e-mail of 30 January, which would have identified that his letter of 29 January had not been received. Third, that Mr X's further letters of 25 February and 6 March had not reached Complaints Officer. The Permanent Secretary said that he added his apology for the mis-filing of Mr X's letter of 3 December to that given by the Complaints Officer in her letter of 28 January, and extended that apology to cover the other failings he had referred to. The Permanent Secretary said. Too, that he was unable to offer any explanation as to why Mr X's letters of 25 February and 6 March were not received. He said that the correspondence was not on file, no record existed of it having been received, and officials did not recall ever having seen it. The Permanent Secretary said that he, along with the Complaints Officer, extended an unreserved apology to Mr X for the breakdown in communication that had occurred. He also said that he had asked officials to establish a system whereby correspondence received in connection with any complaint is properly followed up.

Findings

16. Mr X complained to the Ombudsman that the Assembly were maladministrative in their handling of his complaint. In his response to the complaint, the Permanent Secretary accepted that there had been failings in the Assembly's handling from the point at which Mr X's complaint passed to the Assembly's Complaints Officer, and for which he apologised to Mr X. I welcome the Permanent Secretary's response and note the factors in the Assembly's handling that he highlighted (paragraph 15). However, having examined the papers provided by both Mr X and the Assembly, I consider that there are additional aspects of the Assembly's handling that are worthy of comment.

17. The first aspect for me to consider is how Mr X's initial complaint was handled by the Division with the management responsibility for the area concerned. Mr X first complained to the Division on 14 June 2002 (paragraph 6). It appears that his letter was not acknowledged, but that Officer A instead sent a substantive reply on 1 July. Mr X remained dissatisfied, and wrote again on 26 July. Again, it appears that his letter was not immediately acknowledged. However, Officer A did acknowledge Mr X's letter by e-mail on 19 August and the Head of Branch replied in full on 30 August (paragraph 6). I note that the timescale set out in the Code indicates that a response should normally be sent to a complainant within 15 working days. Mr X should therefore have received a full response by 16 August. In the event that that was not possible, he should have been sent an interim reply with an undertaking to provide a full reply by a specified date. That did not happen. Furthermore, it appears that the leaflet mentioned by the Head of Branch in her letter was not, as promised, enclosed. It would appear that the leaflet that was intended as the enclosure was that contained on the Assembly's file (paragraph 6). If so,

I do not see what help it offered to Mr X. A copy of the Code would have provided him with more appropriate information.

18. On 5 September 2002, Mr X wrote to the Head of Branch asking to proceed with the Assembly's complaint procedure (paragraph 7). The Head of Branch acknowledged Mr X's letter a week later, and said that the Head of Division would reply by 27 September. It is clear from the Assembly's file that the draft reply, which it appears Officer A prepared for the Head of Division, was first dated 23 September. The draft was circulated within the Assembly for comment, with the aim of it being issued by the Head of Division on 27 September, a Friday. In the event, Mr X did not receive it until 1 October, the following Tuesday. It is unfortunate that the date was not changed before the Head of Division signed it and it was posted to Mr X. It is, therefore, not clear when the Head of Division actually signed the letter but Mr X noted that it had been posted to him on 30 September. It seems likely that, if the letter was signed on 27 September, it sat in the Assembly's internal post service over the weekend before being posted on the Monday. This, combined with the error of the date, led to Mr X believing, albeit erroneously, that the letter had been signed on 23 September and that the Assembly had, therefore, taken seven days to post it.

19. The second aspect centres on how the complaint procedure operated from the second stage which is the responsibility of the Complaints Unit. In October 2002 Mr X wrote to the Head of Division to ask for his complaint to be considered by a panel (paragraph 9). The Code requires that having made such a request, and if the complaint is one which can be considered under the Code, the complainant should be told within 15 working days that a panel has been appointed. As Mr X made his request on 3 October, he should have been informed of the appointment of a panel by 25 October. However, by the time Mr X complained to the Ombudsman on 18 March 2003, nearly five and a half months had elapsed without a panel being appointed. That is clearly unacceptable and is not in accordance with the provisions of the Code. It is not clear why this significant delay occurred. I have seen that Mr X's request reached the Complaints Officer on 8 October. There then appears to have been some question as to whether Mr X's complaint warranted a panel, but by 17 October that had been resolved, and the Complaints Officer wrote the Mr X asking him to confirm the complaint he wished the panel to consider. I am not sure why the Complaints Officer felt this was necessary as, from the evidence I have seen, Mr X's complaint was clearly confined to the question of why it had taken three months from the Assembly's decision on his appeal being made to inform him of that decision. I see no reason why the Complaints Officer could not have simply referred that issue, as it stood, to a panel. In the event, it appears that her letter did not reach Mr X. It was the first of several items of correspondence that went astray. I will return to that point later.

20. Throughout the next five months it seems that there were several opportunities to get the Assembly's handling back on track which were, unfortunately, lost. The first occurred on 21 November, when Mr X wrote to Officer A to enquire about progress (paragraph 11). Mr X referred to the fact that he had not heard anything from the Assembly since Officer A's letter of 7 October. Officer A replied to Mr X on 22 November and at the same time passed his correspondence on to the Complaints Officer. There is nothing to indicate exactly when the Complaints Officer saw this correspondence, but it is on file and I have no reason to believe that it did not reach her. However, nothing appears to have been done in response to it. That was most unfortunate, as Mr X's letter served to highlight the fact that the

Complaints Officer's letter of 17 October had not reached him.

Mr X, who was clearly exasperated by this stage, wrote direct to the Complaints Officer on 3 December. I have been told that this letter arrived during a period of unexpected sick leave by the Complaints Officer and, consequently, Mr X's letter was simply placed on file with no action being taken. That was unsatisfactory. Clearly Mr X had expressed his exasperation with the Assembly and it should have been obvious to anyone who read his letter that some contact with Mr X was needed urgently in the absence of the Complaints Officer. The Complaints Officer, however, did not discover Mr X's letter until being contacted by the Ombudsman's staff in January 2003, at which time it also became clear to her that she had not received any response from Mr X to her letter of 17 October. She agreed to write to Mr X to apologise for the mis-filing of his letter, and to send him a further copy of her letter. Although I appreciate that the Complaints Officer realised there had been a breakdown of communications with Mr X, it is of some concern that she did not write to him or attempt to contact him by other means, under 28 January, some two weeks after her contact with the Ombudsman's staff.

21. The Complaints Officer's letter crossed in the post with Mr X's letter of 29 January, which asked that the panel also consider how his complaint had been handled by the Assembly. Mr X took steps to clarify matters by e-mailing the Complaints Officer on 30 January telling her that he had written to her. Apparently, the Complaints Officer did not receive Mr X's letter. She did, however, receive his e-mail but again took no action in response to it. Mr X's further letters, of 25 February and 6 March, also went astray. It is concerning to note that so much of Mr X's correspondence, which I have no reason to doubt was sent, has simply gone astray. The Permanent Secretary has told me that he is unable to offer any explanation as to why Mr X's letters of 25 February and 6 March were not received. That presumably applies also to Mr X's letter of 29 January and, indeed, the Complaints Officer's earlier letter of 17 October. I acknowledge that the problem may be outside the Assembly's (and Mr X's) direct control. However, I recommend that the Assembly review their procedures for receipt and distribution of internal, and external, post with a view to identifying whether any failings exist in their systems, and if so, implement action to resolve those.

22. I am not surprised that Mr X has emerged from his experience with a dim view of the Assembly's complaints procedure. The procedure set out in the Code is straightforward and there is no reason why it could not have applied in Mr X's case. In my view, Mr X was let down by simple human errors at a number of stages, which were then not picked up. In the light, I welcome the steps already taken by the Permanent Secretary to establish a system whereby complaint correspondence is properly followed up. However, I am concerned that that may not be sufficiently proactive to identify the kind of problems that occurred in Mr X's case, where the process of his complaint stalled at a single level for over five months. I therefore also recommend that the Assembly review the operation of their complaints system and consider whether there are any measures which can be introduced to monitor the progress of complaints through the procedure, with the aim of ensuring that a similar situation does not arise again.

23. In upholding the complaint, I welcome the unreserved apologies offered to Mr X by both the Permanent Secretary and the Complaints Officer for the failings identified by the Permanent Secretary at the start of this investigation. I have, in the paragraphs above, identified some further failings in the

Assembly's handling of Mr X's complaint. I therefore invited the Permanent Secretary to apologise to Mr X for those and to consider whether a small ex gratia payment to Mr X, in recognition of the time, inconvenience and postage costs he incurred in pursuing his complaint with the Assembly, was warranted. In reply, the Permanent Secretary repeated the apologies to Mr X already offered and he offered £100 to Mr X in recognition that the level of service afforded to him fell short of expectations. In addition, the review of the complaints system was already underway and, although it was very unusual for correspondence to go astray, he was content to examine whether there were any lessons to be learnt from this case.

Conclusion

24. I find that there was maladministration as outlined in paragraphs 16-23 above. I regard the apologies and ex gratia payment of £100 to Mr X together with the review of process outlined at paragraph 24 to be appropriate remedy for a justified complaint.

30 April 2004 Barbara Lees

Investigation Manager

Duly authorised under section 5(5)

of Schedule 9 to the

Government of Wales Act 1998

Annex

Welsh Administration Ombudsman

Statement of Complaint: Case No: R.33/02-03

Complainant: Mr X

Complaint against: The National Assembly for Wales

1. Mr X complains that the National Assembly for Wales was maladministrative in its handling of a complaint he made about delay in notifying him of the outcome of an appeal made under the National Health Service (Pharmaceutical Services) regulations 1992.

2. The following account is given:

i. On 24 March 2001, Mr X lodged an appeal with the National Assembly for Wales, under the National Health Service (Pharmaceutical Services) Regulations 1992, against a decision by a Health Authority not to allow him to relocate his pharmacy. On 17 October, the National Assembly to complain that there had been unnecessary delay in informing him of the outcome of his appeal, which had led him to incur financial loss. On 1 July, an officer of the National Assembly (Officer A) replied to Mr X's complaint. Mr X remained dissatisfied and on 26 July, wrote again to Officer A and asked for his complaint to be referred to a higher level, as set out under the National Assembly's Code of Practice on Complaints (the complaints procedure). On 19 August, Officer A acknowledged Mr X's letter. Then, on 30 August, the Head of the National Assembly's Pharmacy Branch, (the Head of Branch) replied to Mr X.

ii. On 5 September, Mr X wrote to the Head of Branch asking that his complaint be progressed to the next stage of the complaints procedure. On 12 September, the Branch Head acknowledged Mr X's request and said that the next stage under the complaints procedure was for Mr X's complaint to be reviewed by the Head of Division. Accordingly, the Acting Director of the Primary and Community Health Division (the Acting Director) considered Mr X's correspondence and, on 23 September, wrote to Mr X setting out his conclusions on the matters raised. Mr X remained dissatisfied and on 3 October wrote to the Head of Division to request that his complaint be considered by a panel (the panel), in accordance with the next stage of the complaints procedure. On 7 October Officer A acknowledged Mr X's request and said that it had been passed to the National Assembly's Complaints Officer (the Complaints Officer) for attention.

iii. On 21 November, Mr X wrote to Officer A and pointed out that the complaints procedure required a complainant to be notified of the appointment of a panel within 15 days of their request. Mr X said that it was more than six weeks since he had made his request, yet he had heard nothing further; he asked that the panel also consider that further delay. Officer A replied on 22 November that he had passed Mr X's letter to the Complaints Officer and had asked her to deal with it as a matter of urgency. Officer A asked Mr X to address any further correspondence to the Complaints Officer, and provided her contact details. On 3 December, having heard nothing further, Mr X wrote to the Complaints Officer and complained about the delay in dealing with his request for a panel.

iv. On 5 January 2003, having had no reply, Mr X wrote to the Ombudsman's Office. On 15 January, one of the Ombudsman's staff contacted the Complaints Officer who said that she had written to Mr X on 17 October 2002 seeking his confirmation of the matters he wished the panel to consider. She could find no trace of a reply from Mr X until his letter of 3 December, which had arrived while she was absent on sick leave and which had been filed in error. The Complaints Officer said that she had only discovered the oversight when contacted by the Ombudsman's office. She agreed to write to Mr X again, and to enclose a copy of her letter of 17 October.

v. On 28 January the Complaints Officer wrote to Mr X and apologised for the earlier oversight. She enclosed a copy of her letter of 17 October, and assured Mr X that his request for a panel would be expedited as soon as he had confirmed the matters that he wanted the panel to consider. On 29 January, before receiving the Complaints Officer's letter, Mr X wrote to the Complaints Officer and said that as it was almost four months since he had made his request for a panel, he wanted the panel to also consider

the handling of his complaint. He asked that the Complaints Officer deal with his request as a matter of urgency. Then, on 30 January when he received the Complaints Officer's letter, Mr X emailed the Complaints Officer saying that their correspondence had crossed in the post. He referred to his letter of 29 January, and asked her to let him know if she required any further information. On 25 February, having had no reply, Mr X wrote to the Complaints Officer chasing a response. On 6 March, again having had no reply, Mr X wrote to the Complaints Officer and said that if he did not receive a reply within five working days he would assume that she had no intention of progressing his complaint and he would again contact the Ombudsman. Having had no reply, Mr X wrote to the Ombudsman on 18 March.

3. Mr X complains that the National Assembly's handling of his complaint was dilatory, maladministrative and not in accordance with its Code of Practice on Complaints. As a result he has been frustrated in his attempts to secure a panel and has lost confidence in the National Assembly's complaint procedure. He seeks full redress.

4. The following departmental references have been quoted:

A-CMB-39-01-012

5 June 2003