

## Preface

During 2002 the Scottish Parliamentary Commissioner for Administration began to investigate complaints against the Scottish Executive Environment and Rural Affairs Department (SEERAD)<sup>1</sup> from three people, Ms Grey, Mrs Green and Mrs White<sup>2</sup>, who were the owners of animals culled during the 2001 outbreak of foot-and-mouth disease.

Those investigations were still in progress when the office of the Scottish Parliamentary Commissioner for Administration ceased to exist on 22 October 2002. I therefore assumed responsibility for them under the terms of Paragraph 4 of Schedule 7 to the Scottish Public Services Ombudsman Act 2002. The investigations are now complete.

Because there are common themes between them and they raise issues of general interest I have decided to lay this report before the Parliament under Section 17(4) of the Scottish Public Services Ombudsman Act 2002. This report also encompasses my reports on the individual complaints which I am required to lay before the Parliament under Section 15 of the Scottish Public Services Ombudsman Act 2002.

My report is divided into six sections.

**Section One** is introductory. Here I outline briefly the background to the foot-and-mouth outbreak (paragraphs 1-6); statutory provisions relating to the control of animal diseases (paragraphs 7-12); and the administrative and local arrangements made for dealing with foot-and-

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<sup>1</sup> At the time of the events complained of, the Department was called the Scottish Executive Rural Affairs Department (SERAD). For convenience, in this report I refer to both SEERAD and SERAD as "the Department".

<sup>2</sup> Not their real names: pseudonyms are used to preserve anonymity as required by Section 15 of the Scottish Public Services Ombudsman Act 2002.

mouth in Scotland (paragraphs 13-19). I also explain the jurisdictional limitations placed on me in so far as they are relevant to the cases with which the report is concerned (paragraphs 20-21).

**Section Two** summarises the complaints and issues I have considered and the conclusions I have reached.

The next three sections contain the reports of my investigations of the individual complaints to me.

**Section Three** deals with Ms Grey's complaint.

**Section Four** deals with Mrs Green's complaint.

**Section Five** deals with Mrs White's complaint.

**Section Six** sets out general comments and conclusions (paragraphs 150-156) and then my findings on the individual complaints I have considered. Findings on Ms Grey's complaint are at paragraphs 157-159; on Mrs Green's at paragraphs 160-180; and on Mrs White's at paragraphs 181-191. My conclusions are contained in paragraph 192. A glossary of the terms used in the report is at Annex A. A list of the main individuals mentioned in the report is at Annex B.

Professor Alice Brown  
Scottish Public Services Ombudsman  
18 December 2003

## **Section One Introduction**

### **The outbreak of foot-and-mouth disease (FMD) in Scotland**

1. FMD is a highly infectious animal disease, caused by a virus. Animals become infected through inhalation of or physical contact with the virus, which is present in the excretions and secretions of infected animals (faeces, saliva, breath, etc). The disease may affect animals' long-term health and condition and infected animals can suffer acute stress and pain. Species susceptible to FMD include sheep, pigs, cattle and goats. Sheep and cattle are particularly susceptible to airborne viruses, which can be carried many miles by the wind. Although signs of FMD are easily recognised in some animals, the disease is difficult to diagnose in sheep and goats, as infected animals often do not display symptoms.

2. The first UK cases of FMD in 2001 were identified on 20 February in pigs at an abattoir in Essex. The first Scottish FMD cases were confirmed at Lockerbie in Dumfries and Galloway on 1 March. Movement restrictions and a 10km surveillance zone were put in place.

3. On 15 March the Minister for Environment and Rural Affairs<sup>3</sup> made a statement in the Scottish Parliament. This included:

"It has become apparent that the sheep flock has the potential to act as a reservoir for foot-and-mouth. In some instances, sheep can be infected without showing clear symptoms. They are nevertheless still able to pass the disease on to other sheep, cattle or pigs.

"I, together with other agricultural ministers in the United Kingdom, have therefore decided, on the advice of the chief veterinary officer, that we must now take pre-emptive action to destroy the potential

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<sup>3</sup> Who in the rest of this report I refer to as "the Minister".

reservoir of infection. That means identifying sheep flocks that may be harbouring the disease and destroying them, whether or not signs of the disease are yet evident.

"... all sheep flocks on farms within 3km of infected premises will be destroyed. The Dumfriesshire and Twynholm areas will be particularly affected."

4. This cull began in the Dumfries Infected Area on 22 March. On 24 March the Scottish Executive announced that the pre-emptive cull would be intensified to include all susceptible species on farms contiguous to premises where FMD had been confirmed on or after 16 March. Contiguous premises were those adjoining infected premises (IP), whether or not they were within 3km of the IP. The contiguous cull thus took all sheep, goats, pigs and cows on farms that physically adjoined an IP. The cull policy was also refined by adopting time targets that were recommended by government scientists to stop the spread of disease. These were that IPs and dangerous contacts (animals which there was reason to consider had been exposed to FMD) should be culled out within 24 hours, and all susceptible animals on contiguous holdings should be culled within 48 hours of confirmation of infection on a neighbouring IP.

5. The FMD outbreak lasted for 90 days in Scotland, the last case being confirmed in Berwickshire on 30 May. In Scotland 132,000 animals were slaughtered on IPs; 624,000 on dangerous contact, slaughter on suspicion and pre-emptive cull premises and a further 307,000 were slaughtered for welfare reasons.

6. In August 2001 the Prime Minister and the Secretary of State for Environment, Food and Rural Affairs invited Dr Iain Anderson CBE to conduct an inquiry into the Government's handling of the FMD outbreak in Great Britain. His report, *Foot-and-mouth Disease 2001: Lessons to be Learned Inquiry Report* (the Anderson report) was

published in July 2002. The report was generally positive in its comments on the handling of the outbreak in Scotland.

### **Statutory provisions**

7. The Animal Health Act 1981 (the Act), and Orders made under it, provides the statutory framework for action to combat animal diseases, including FMD, in the UK. The UK is bound by EU provisions that apply to the control of FMD. EU Council Directive 85/511/EEC of November 1985 says, "... action must be taken as soon as the presence of [FMD] is suspected so that immediate and effective control measures can be implemented as soon as its presence is confirmed ...". Article 9 states that once FMD has been officially confirmed, a protection zone based on a minimum radius of 3km must be established. These EU requirements are given effect in Britain by the Foot-and-Mouth Disease Order 1983 (the Order), made under the Act.

8. Section 31 and Schedule 3 of the Act give the Minister wide powers to **slaughter**. The Minister may if he thinks fit cause to be slaughtered any animals which are suspected of being affected with FMD or which appear to have been in any way exposed to FMD. Paragraph 3(1) of Schedule 3 provides that:

"The Minister may, if he thinks fit, in any case cause to be slaughtered -

- a) any animals affected with foot-and-mouth disease, or suspected of being so affected; and
- b) any animals which are or have been in the same field, shed, or other place, or in the same herd or flock, or otherwise in contact with animals affected with foot-and-mouth disease, or which appear to the Minister to have been in any way exposed to the infection of foot-and-mouth disease."

9. Article 5 of the Order provides that where a constable, an inspector or the Divisional Veterinary Officer has reasonable grounds

for supposing that disease exists or has existed in the past 56 days on any premises, he should serve a notice in Form A on the occupier of the premises declaring them to be an infected place. Form A is one of a series of forms for which the Order makes provision (see table at Annex C)<sup>4</sup>. Section 83 of the Act provides that any notice may be served on the person to be affected by it by (amongst other things) leaving it at the last known place of abode or posting it to the last known abode. That is, Forms A and D did not have to be delivered personally into the affected person's hands.

10. Powers to **enter premises** without the owner's permission are conferred by Section 66 of the Act. This states that it is an offence against the Act for anyone to refuse, obstruct or impede entry to any official who is acting in execution of the Act or of an order of the Minister. Section 63 of the Act gives an inspector all the powers that a constable has, in the place where the inspector is acting.

11. During the 2001 FMD outbreak a small number of producers applied to the courts for an order to temporarily suspend the slaughter of their animals, while the decision to do so was Judicially Reviewed. None of these was ultimately successful in preventing the cull. On 1 May 2001, Lord Carloway gave an opinion in the Court of Session in one such case. He ruled that the Department had to apply some kind of policy in order to manage the FMD outbreak, and that successful management of the outbreak might well depend on that policy being rigorously enforced. He said that there was nothing wrong with such an approach provided that the policy was capable of "delivering a proportionate response in a particular case".

12. **Valuation** of animals is covered by the Foot-and-Mouth Disease (Ascertainment of Value) (Scotland) (No.3) Order 2001, which came into force on 30 March 2001. This provides a schedule giving a

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<sup>4</sup> The Anderson report (see paragraph 6 above) commented that some of the routine disease notices were poorly written and recommended that Forms A - E be revised.

“standard value” for sheep, pigs and cattle, which is used to determine the value of animals where an owner elects not to have them valued by a valuer. Where the owner elects to have an animal valued, or has not made *any* election to have the animal valued, then the value is the amount determined in writing by a valuer appointed by Scottish Ministers. If the owner disputes that valuation within 14 days, an arbiter can determine the valuation.

### **Administrative arrangements**

13. Under the terms of the Scotland Act 1998, legislation on all animal health matters was devolved to the Scottish Parliament, and policy and its implementation became the responsibility of Scottish Ministers, who are accountable to the Scottish Parliament for all animal health matters, including disease control. Specific responsibility for these matters lies with the Minister (paragraph 3), to whom the Department reports.

14. The State Veterinary Service (SVS) advises Britain's Agriculture Ministers on animal health matters and manages the response to outbreaks of infectious animal diseases. At devolution, it was decided to retain SVS as a Britain-wide body. The Chief Veterinary Officer (CVO), based in England, therefore advises Scottish Ministers. However, in practice, the CVO's responsibilities are delegated to the Assistant Chief Veterinary Officer (ACVO), who is based in Edinburgh. SVS had responsibility for FMD contingency planning in Scotland.

15. The agricultural side of the Department oversaw management of the overall disease effort and its implications for the agricultural industry. The work was co-ordinated through the Department's Head Office in Edinburgh. At a local level meetings took place every day, involving senior staff and various agencies such as the Army and Police.

### **Local arrangements for dealing with FMD**

16. On 28 February 2001 a Disease Control Centre was set up at the Department's Ayr Animal Health Divisional Office. The Divisional Veterinary Manager (DVM) there was in charge of the cull operation. A Forward Field Station was also set up in Dumfries, using existing offices and the Dumfries and Galloway Council Emergency Centre. On 30 March, two days after the first case of disease was confirmed in the Borders, a Command and Control Centre was set up at the Galashiels Animal Health Division Office, headed by the Galashiels DVM.

17. By early May 2001 there were 180 vets in Dumfries and Galloway, including 162 Temporary Veterinary Inspectors (TVIs), who were usually local vets specially recruited for the task. Animal health and field officers and other staff also assisted in the operation to deal with FMD. Galashiels had between 30 and 40 vets at the peak of the outbreak.

18. Responsibility for implementing the "3km policy" announced by the Minister fell to the Centres at Ayr and Galashiels. The Centres drew up "cull lists" identifying premises where stock was to be culled. Culling was generally undertaken by teams of experienced slaughtermen under the supervision of SVS staff, for whom daily lists were prepared of premises on which culling was to take place.

19. SVS staff had access to a manual which provided guidance on the practice and procedures to follow when dealing with suspected or confirmed outbreaks of FMD. In accordance with the procedures set down in the manual, once premises were confirmed to be within 3km of an IP the DVM was to ensure that a Form A was, or had been, served on the premises. The owner of the affected animal or animals would also be handed a valuation form and accompanying "Notes to Owners" and invited to sign in the space provided. The owner would retain a copy of the valuation form and if he or she wanted to dispute the valuation would have to give notice within 14 days of the notice



being served. If an owner objected to slaughter a veterinary Officer and an agricultural Officer reviewed the case, and decided whether or not the cull should go ahead. If, after this review, the owner still disagreed with the ruling, the matter was reviewed at a more senior level. In some cases, particularly where large numbers of animals were involved, more senior officers might visit the premises to explain the policy. This usually resulted in agreement to cull.

### **Jurisdiction**

20. My role as Scottish Public Services Ombudsman is to consider complaints from those who consider they have suffered hardship as a result of maladministration or service failure on the part of Scottish public bodies or those acting on their behalf. My jurisdiction does not extend to UK Government Departments such as the Department for Environment, Food and Rural Affairs (DEFRA), previously the Ministry of Agriculture, Fisheries and Food (MAFF). Nor do bodies such as the Police and the Royal College of Veterinary Surgeons fall within my remit and when I refer to them in this report I do so only to set in context the matters that I have considered.

21. As I have already said, my role is to consider complaints relating to alleged maladministration or service failure. It is not my role to question legislation, government policy or administrative decisions that public bodies are entitled to make, and which are made without maladministration. Nor can I investigate matters where there is a remedy by way of proceedings in a court of law unless in the particular circumstances I do not consider it is reasonable for the individual to resort to that remedy. The complaints I have considered include allegations that Departmental staff acted unlawfully in culling the complainants' animals and committed criminal acts such as assault and breaking and entering. Those are all matters in respect of which legal proceedings might be pursued and therefore, outside my remit. I have limited myself to considering whether there is evidence of maladministration or service failure by the Department or those acting

on its behalf and if so, whether that has caused injustice or hardship to the complainants.

## **Section Two**

### **Summary of complaints, issues and conclusions**

#### **The individual complaints**

22. Ms Grey's complaint related to the culling of her family's pet sheep and Mrs Green's to the culling of her family's pet goat. Mrs White's complaint related to the culling of rare breed sheep belonging to her and her husband.

23. All three complainants questioned the legality of the cull of their animals and the procedures followed in undertaking them. Ms Green was particularly distressed by events surrounding the culling of her family's goat and made complaints against individual officers in relation to that. I have also investigated complaints about how the Department handled correspondence after the animals were culled.

#### **Issues considered**

24. It is clear that the complaints to me were partly rooted in disagreement with aspects of the Department's policy on dealing with FMD - particularly the 3km cull. For example, Mrs Green told my Officer that she did not agree with the policy of slaughtering apparently healthy animals. She is entitled to that view and I can understand why she holds it. However, as I have noted in paragraph 21, it is not for me to question legislation or government policy. I have concluded in all three cases I have investigated that given the statutory framework and government policy in place at the time there are no grounds for me to question the decisions that the animals should be culled.

25. As to the complaints about the way in which the decisions were implemented, I have found that the complainants had a number of misapprehensions; for example, that culling could only take place with their permission or after they had been given a valuation for the animal or animals concerned. From what two of the complainants told

my officers it appeared that they had received inaccurate information from sources other than the Department and over which the Department had no control. The Department cannot be held responsible for that. However, I consider in Section Six whether the Department might have done more to ensure that accurate information was available to people such as the complainants.

26. In that context, it has emerged from my investigations that there were problems relating to the forms issued under the Order (paragraph 9), and in particular Form A. For example, under the procedures being operated at the time, it is at least arguable that all three complainants should have received Forms A. Only Mrs White received a Form. However, she also questioned the fact that the forms stated that her animals were on IPs when in fact they were culled under the 3km policy. I also found in Mrs White's case that there was confusion about whether particular documentation, some of which appeared to have been issued jointly by the Department and DEFRA, applied in her case. I shall return to the use and wording of the forms, and to the issue of documentation in Section Six.

27. I have found some procedural shortcomings, particularly in relation to the serving of forms. But in all essential aspects I have found that the arrangements made for the culling of animals in the three cases I have investigated were correctly carried out. I have not upheld Mrs Green's serious complaints against the two officials involved in the culling of her family's goat. It is clear that events surrounding the cull were deeply traumatic for Mrs Green and her family. However, the officials found themselves in a difficult situation which essentially was not of their making. They had a job to do and I consider that they took reasonable steps to carry it out in such a way as to minimise distress as far as that was possible.

28. I have found serious deficiencies in the way that the Department responded to correspondence from the complainants. Dealing with

FMD put the Department under enormous pressure. Given that, some falling away from the standards that would normally be expected from public bodies in dealing with correspondence would be neither surprising nor legitimate grounds for criticism. However, the problems that were encountered in these cases were significant and I, therefore, raised them with the Head of Department. I return to this specific issue in Section Six.

### **Section Three**

#### **Investigation of Ms Grey's complaint**

29. Ms Grey complained that the Department did not follow correct procedures under the Act when they culled her family's pet sheep on 26 March. The second aspect of Ms Grey's complaint was that the Department had failed to respond to a letter she sent them on 26 April 2002.

#### **Events giving rise to the complaint**

30. On 26 March SVS culled out a farm opposite Ms Grey's cottage. The Cull Team Supervisor then noticed a sheep in Ms Grey's back garden. She called the Cull Centre and obtained confirmation that the animal should also be culled under the 3km policy. As there was a no entry sign on the gate, she then rang Ms Grey. Ms Grey refused to let her sheep be culled by SVS, so the handling of her case was passed over to the Cull Centre. The Cull Centre contacted Ms Grey and the compromise was reached that Ms Grey's own vet would put the sheep down.

31. On 18 May the Department issued Ms Grey with a Form B stating that the Form A (see paragraph 9) that had been served on 26 March was withdrawn. On 11 April 2002 Ms Grey wrote to the Department, saying that she had never had a Form A and asking to be sent a copy. On 19 April, the Department responded that there was no record of Form A being served on her premises but added that the legality of the culling of an animal did not depend on this. On 26 April Ms Grey wrote again to the Department asking what legality there was for culling her sheep, and why movement restrictions had been placed on her premises. At the bottom of her typewritten letter she added a handwritten note stating "£10 for file" and attached a cheque. The Department acknowledged receipt of Ms Grey's letter on 29 April, and informed her that her letter and cheque had been passed to the

Scottish Executive Data Protection Unit (SEDPU).

32. On 1 May SEDPU sent Ms Grey a letter stating that they interpreted the hand-written footnote on her letter of 26 April as a Subject Access Request for personal information under Section 7 of the Data Protection Act. The letter went on to ask her to provide proof of identity so that they could process her request. Ms Grey had not received a response to the substantive points raised in her letter of 26 April when, on 14 June, she complained to my predecessor.

### **Administrative background**

33. Paragraph 19 above explains the procedures SVS staff were expected to follow when dealing with suspected or confirmed outbreaks of FMD. From the SVS manual referred to in paragraph 19 it is clear that apart from Form A the only other paperwork that might have been served on Ms Grey was a valuation of her animal. In the event, however, because her sheep was not culled by SVS, Ms Grey was served by post a valuation form dated 26 March.

### **The Department's response to the complaint**

34. The Department have confirmed that no Form A was served on Ms Grey. They say that this was simply an oversight caused by the extreme pressure of work at the Cull Centre.

35. The Department have also said that on 26 March Ms Grey's property was within 3km of seven IPs, and was shown on the Department's cull list. It was not however included on the list of premises to be culled that day by SVS.

36. To explain this the Department have told me that normally the Cull Centre would arrange for all premises in an area to be culled at the same time. Ms Grey's premises should therefore have been on the same daily list (paragraph 18) as the neighbouring farm. However her premises were missed when the daily list for that area was put

together. This was because the daily list from which SVS staff worked was compiled using the Department's Integrated Administration Control System (IACS) that holds details of premises registered for subsidy purposes. Ms Grey was not claiming subsidy for her pet sheep, and therefore was not on the IACS list, although she was registered with the Department as a keeper of animals<sup>5</sup>.

37. As SVS did not have Ms Grey's premises on their cull list for 26 March, and since they did not enter the premises and only spoke to Ms Grey by phone, the opportunity to serve Form A in the usual way did not arise. However, the Department maintains that the legality of culling animals to prevent the spread of FMD does not depend on the serving of any notices but is authorised under Section 31 (as read with Schedule 3) of the Act (see paragraph 8).

38. As regards Ms Grey's letter of 26 April (paragraph 31), the Department became aware that this still required a substantive reply when they received the Statement of Complaint dated 1 August 2002 from the Scottish Parliamentary Commissioner for Administration's office. As a result, on 6 September the Department sent Ms Grey a letter answering the points raised in her letter. This response included an apology for not writing earlier, and an explanation that they had not replied because they thought that the points she raised had been answered during a telephone call on 22 April 2002. The Department wrote to my predecessor's Office on 11 September to confirm that a reply had now been issued, and apologised for not sending Ms Grey a prompt response. They stated that this was due to an oversight on their part.

39. I set out my findings in relation to Ms Grey's complaint in Section Six (paragraphs 157-159).

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<sup>5</sup> A person keeping a sheep or goat should register it under the UK Sheep and Goats (Records, Identification and Movement) Order 1996 (SAGRIMO), or the Sheep and Goats Identification (Scotland) Regulations 2000.



## **Section Four**

### **Investigation of Mrs Green's complaint**

40. Mrs Green complained that the Department did not follow appropriate procedures when they culled her family's pet goat on 5 April 2001. She also complained that a Departmental official was rude and assaulted her daughter (Ms Gold) and that when she complained, the Department failed to investigate the matter or to properly answer her letters.

41. Mrs Green and her family live in a cottage (the cottage) with outbuildings and a small area of ground, completely surrounded by fields belonging to the neighbouring farm (the farm), although their property is not part of the farm. A road runs beside their property, leading up to the main road in one direction and towards other cottages and the farm buildings (where it terminates) in the other. This road is public from the main road down to a point beyond Mrs Green's home.

42. During the FMD outbreak, a disinfecting point was set up on the road, between Mrs Green's home and the main road. Evidence in the Department's file shows that after FMD was confirmed on the farm, the working disinfecting point was moved onto the private part of the road, closer to the farm.

#### **Complaint 1 – Events surrounding the cull of the goat**

##### **Mrs Green's evidence**

43. When Mrs Green complained to my predecessor, she said that she and her family were traumatised by the events of 5 April 2001. She believed that the Department had acted illegally in killing her family's pet goat without consent. She supplied her account of events. In this she said that no Form A was ever served on her premises and that after the animals on the farm were culled, disinfectant precautions

were moved away from her house to a point nearer to the farm. She did receive a Form B dated 22 September, which the Department told her was issued in error.

44. At interview, Mrs **Green** told my Officer that when FMD began to spread, the family were very concerned for the well-being of their pet animals. They discussed what they could do to protect them and took significant disinfectant precautions around the cottage. Their goat was kept close to the cottage. Normally she went for walks with the family, but during the FMD outbreak she was not allowed outside the area where her shed was located. Mrs Green said that she got most of her information about FMD from friends with Internet access, and had understood that she would have to give consent for the slaughter of any animals in her possession. She did not agree with the policy of slaughtering apparently healthy animals, although she accepted the necessity of slaughtering those that were confirmed to have FMD.

45. On 22 March, she came home from work to find that the animals on the farm had been slaughtered because FMD had been identified there. Although the farmer ceased to maintain the disinfecting point on the road outside the cottage after this, the family continued to take disinfectant precautions around their home. As the Department had not contacted the family about their goat, they hoped that she would not be affected by the cull. On 2 April, however, a vet telephoned on behalf of the Department to say that the goat had to be culled. The family told him that they would not accept this. On 3 April a second vet visited by arrangement. He had a long discussion with the family, during which they explained their point of view. He said that he would put this to those in charge at the Department and come back to them. Mrs Green said that the vet indicated that other local people could become angry and aggressive towards the family if they did not accept the cull, which she felt was threatening. On 4 April, the vet phoned and said that the matter had been reviewed and that, despite their wishes, the goat had to be culled. He offered to do it himself, as he

had met the family and thought this might be easier for them. Mrs Green refused.

46. On the night of 5 April, a third vet acting for the Department arrived without warning and said that he was there to cull their goat<sup>6</sup>. He did not show any paperwork, and he refused to examine or test the goat. Because Mrs Green believed that she had to sign for compensation before anything could happen, she told the TVI that she would not agree to the cull, thinking that if she refused, then he could not actually carry it out. The TVI said that if she did not agree to him culling the goat, he would get the police to arrest her. Mrs Green told him that he might as well do that, and he left. A police Sergeant and Constable arrived soon after and Mrs Green went through everything with them. She did not think that she was breaking any laws. When she asked if she could be arrested for refusing to let the vet cull the goat, the Sergeant said that this was correct, and showed her a folded piece of paper, which turned out to be the Act. Eventually the Sergeant said that she did not want to arrest Mrs Green, and that she and her colleague would go outside and give her a few minutes to think about what she should do.

47. Mr Green locked their goat in the shed, while Mrs Green telephoned her daughter at work to tell her what was happening, and rang friends for advice. While she was on the phone, the police officers came back and again tried to persuade her to agree. Not long after that Ms Gold ran into the cottage screaming. Mrs Green tried to calm her by saying that their goat was safe. Ms Gold, however, continued to scream that the goat was dead. Mrs Green then tried to go outside to see what had happened. The police officers tried to stop her, but eventually she ran from the house, believing Ms Gold to be behind her. When she heard more screaming, she turned back to find the Constable struggling with Ms Gold. Mrs Green asked him to let go

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<sup>6</sup> This vet was a Temporary Veterinary Inspector and I refer to him hereafter as the TVI.

but he would not do so. Eventually Ms Gold bit him and ran out of the house. Mrs Green found that the TVI had culled their goat, and that her body had been placed in a Land Rover parked further up the road. Mrs Green and Ms Gold went to say goodbye to her. Mrs Green asked if the goat could be buried near to the house, but was told that this was not possible, increasing the distress that the family were under. After this, Ms Gold became very upset again. Events culminated in Ms Gold being arrested and charged.

48. Mrs Green was unhappy with the attitude of a man standing beside the Land Rover. She asked him who he was but he ignored her, and turned his back. She moved in front of him and he turned away from her again. She asked who he was and he said that he was only the driver. Later she found out that he was an official from the Department<sup>7</sup>.

49. Mrs Green felt that the police officers deliberately distracted her while the TVI went to cull the goat, and said that this had caused her particular distress. While she was talking to them for the second time, the TVI and the TAO went to the shed, forced entry by removing a piece of wood from the door, and culled the goat without permission. The TVI said nothing by way of explanation after this happened. She felt that what he had done was in effect breaking and entering and stealing, and that the Police should have investigated this. She also felt that her responses to the various vets and officials to whom she had spoken had been misrepresented.

50. Mrs Green said that if their goat had been culled at the same time as the animals on the farm, it would have been easier for the family to accept. She therefore wanted to know why it was a further two weeks before the Department decided that the goat should be taken. Neither did she think that the Department had the power to cull the goat in the way that they did. Farmers and other people who

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<sup>7</sup> He was a Temporary Agricultural Officer and I refer to him hereafter as the TAO.

had lost animals had all signed an agreement on compensation, and her understanding was that the animals could not be taken until that was signed. She would willingly have had the goat tested, and if the test had proved positive would have agreed to the cull, but by her own vet, with the family there. They would have coped with it much better if they had been able to be with their goat at the end. Because, however, she had thought that the goat would be safe until she got something in writing saying the cull had to take place, she had not raised this question. She and her family had been traumatised by the events of 5 April, and she found it hard to believe that a Government Department could act in such a way.

### **Ms Gold's evidence**

51. Ms **Gold** said that on 4 April she spoke on the telephone to a Departmental vet. He told her that the family's goat had to be culled, and she replied that they would do everything that they could to try and prevent this. She, too, had expected that some kind of a form or a letter would be served. She had not thought that Departmental staff would come to the house in the way that they did and insist on killing the goat there and then.

52. On 5 April, Mrs Green rang her at work to say that a vet had arrived to cull their goat. Ms Gold was very upset by this and immediately drove home. When she arrived at the road leading to the cottage, she found three cars parked part of the way down it, so she had to stop between them and the main road. Two men (the TVI and the TAO) were by the cars, and when she tried to go to the cottage, one of them told her that she was not allowed down the road because it was an IP. She replied that she and her family had been going up and down the road without hindrance until now, and made to go past. The TAO tried to stop her. She could not remember exactly what had happened, but she thought it was possible that he had put his hands on her arms. She raised her hand, he jumped backwards and she ran on down the road towards the house. He followed her, and was

abusive and sarcastic. In retrospect she felt that he knew what she was going to see when she got to the cottage. When she reached the house she found the goat lying on the roadside, dead, with a bag over her head. She was very distressed at the way she was treated and at finding the goat in that way.

53. After these events Ms Gold telephoned various Departmental offices. The constant response she received from staff when she called was an expression of surprise when she described the events that had taken place. Staff said that what she described could not possibly be correct and asked if she had received any paper work at the time, implying that the family should have been given some paper work if the culling was to take place. This had added to the family's distress, as it seemed that people within the Department did not know the right way to go about things.

### **Other evidence**

54. The Head of the Department responded to my predecessor's Office at the start of the investigation, and provided the Department's administrative files. He said that in an effort to contain FMD, Scottish Ministers decided to undertake a pre-emptive cull of sheep, goats and pigs within 3km of IPs and to cull all susceptible animals on premises contiguous to IPs. The aim of this action was to remove FMD susceptible species that might have been infected, but that were not showing overt clinical symptoms. Mrs Green's home was both within 3km of, and adjacent to, an IP where FMD had been confirmed through laboratory tests. He explained that between 2 and 4 April Departmental vets had contacted Mrs Green on four separate occasions. They had explained why it was necessary to cull her family's goat but Mrs Green remained adamant that she was not willing to allow this. The vet who visited the family on 3 April referred the matter to Divisional Veterinary Managers in Dumfries who reviewed the circumstances, and confirmed that the goat must be culled. On 4 April the vet telephoned Mrs Green to tell her this.

Mrs Green made it very clear that the cull would be resisted.

55. Because of Mrs Green's response, it was arranged that the police should attend when the cull took place, in line with Departmental policy. No Form A or D (paragraph 9) was served on Mrs Green, as the Department believed that the Form A already served on the adjacent farm covered Mrs Green's home. The Department, however, did not need to serve these forms in order to carry out a cull.

56. On 5 April, the TVI went to the cottage to carry out the cull. At first he went in alone in the hope that he might persuade Mrs Green to accept that the cull had to take place, but when it became clear that he was not going to get her agreement, he asked the accompanying police officers to explain the position to her. They were no more successful and told the TVI this, then went back to speak to Mrs Green. The TVI and the TAO decided to examine a locked shed in the garden, where they believed the goat was housed. They gained access by removing a piece of wood from the door, and found the goat inside. The TVI administered an injection of pentobarbitone, and then the two of them removed the body. They left the goat on the roadside while they brought a car to move it away. While they were going towards the car, Ms Gold arrived in an agitated state and tried to reach the house. The TAO stopped her by placing his hand on her shoulder to try to get her to disinfect herself, but he did not assault or abuse her. As Ms Gold was very distressed she was eventually allowed to pass. It was then that she saw the goat's body lying by the house. The TVI and the TAO took the goat and placed it in black plastic bags before transferring it to a Land Rover to be taken for incineration at a disposal site. The family saw the goat in the Land Rover before it was taken away.

57. During the investigation my Officer interviewed the TVI, the TAO, the police Sergeant and the police Constable, all of whom were present in or near the cottage on 5 April 2001 when the Green family's

goat was culled. (As I have noted in paragraph 20, the actions of the Police do not fall within my jurisdiction and I include evidence from police officers in this report merely to provide background to the matters I have investigated.) My Officer also interviewed a number of other Departmental officials.

### **Evidence from those present on 5 April**

58. **The TVI** said that he had acted as a veterinary inspector for SVS for many years and was now semi-retired. He volunteered to assist during the FMD outbreak and was posted to Dumfries as a TVI. A TVI's usual job was to go to places where FMD was suspected, assess the situation, and fill in the appropriate forms with the owner. He had been well aware of the policies in place at the time, although he had not studied the legislation in detail. When he was asked to attend at Mrs Green's home, he knew that FMD had been diagnosed at the farm, and that a goat was to be slaughtered at the cottage. He understood that Forms A and C had been served on the farm, where the disease had been confirmed via lab results. He considered the cottage to be technically part of the farm as it was completely surrounded by its fields and so for all practical purposes was an IP. The family's goat lived in the garden of the property, only yards from infected animals and there was every possibility that she had picked up the infection.

59. On the evening of 5 April he was told to attend a job for which a police escort had been arranged. The TVI understood from this that problems were expected. He was instructed that he was to cull the goat at the cottage, after which the TAO was to take the body to an incineration site. The TVI met the police officers and the TAO in Dumfries, and suggested that they should not at first come to the cottage, but should wait nearby while he went and spoke to the family. He knew that other vets had tried unsuccessfully to convince Mrs Green that her family's goat had to be culled, but hoped that he would have more success, as the cull had to take place that night. He drove to the road beside the cottage, and left his car at a disinfecting



point, which was part of the way down that road. He went to the door and explained that he was a TVI from Dumfries, and that he had come to cull the family's goat. He explained to Mr and Mrs Green that they were on an IP, and that the goat must be culled. Mrs Green asked what authority he had to do this, and he said that he had an official document in his pocket. By this, he meant that he was carrying the official letter of authority enabling him to act as a TVI. Mrs Green did not ask to see it, and he did not show it to her, as it had his home address on it. He was worried that given her manner she might later try to get in touch with him, or send the media to his door. He said that Mrs Green was haranguing him, saying that he should be saving animals, not killing them, and insisting that her goat should be tested. It was clear that he was not going to get her consent, so he told her that the goat *had* to be culled, and that if she was not going to agree he would have to get the Police to help him.

60. He went outside and phoned the police officers on his mobile phone. They arrived very quickly with the TAO. He explained that he was clearly going to be unable to convince Mrs Green to agree to the cull, and suggested that if the police officers went to speak to her it might make her realise how serious the situation was. He felt that the sight of their uniforms might convince her that the cull had to go ahead. They went into the cottage, and he and the TAO waited by the cars. After about 10 to 15 minutes the police officers came out and said that Mrs Green was still refusing to allow the cull to take place. The TVI realised that he had to take some firm action. He could see by looking down the side of the house that there was a shed in the garden, where he thought the goat might be. From what Mrs Green had said, he believed that if he said he would not carry out the cull that night but would return the next day, she would take the opportunity to organise some kind of media protest and that there would be a serious confrontation. One of the first things that Mrs Green told him was that she was going to phone the press. She struck him as the kind of person who would pursue that line of action.

61. The TVI felt that it was necessary to carry out the cull immediately, taking into account the need to prevent further infection. He told the police officers that the best thing would be if they returned to speak to Mrs Green, while he found the goat and culled it. The police officers went back into the house, and the TVI and the TAO went to the garden shed, which had a "stable" door in two halves with a heavy padlock on it. A piece of wood was nailed across the foot of the top half, and when he pulled this off, the bottom half could be opened. They entered the shed and found the goat. He asked the TAO to hold her head, while he gave her a lethal injection. She was not at all distressed or agitated, and had a very peaceful end. After this, he and the TAO carried the goat to the roadway at the side of the cottage, where they laid her down because she was heavy. The TVI went to get his car to move her up to the TAO's Land Rover. While he was doing so, Ms Gold arrived in a car. She was in a rage. She swore and called him a murderer, and said that there was no way he was going to put the goat down. By this time the TAO had arrived and was standing with him, and Ms Gold went to go past them. The TAO said that she must disinfect herself, stood in front of her and put his hand on Ms Gold's shoulder. Because she was so upset, however, the TVI said "let her go", as he thought it unlikely that she would do any damage by entering the premises. They were unable to say much more to her, as she was desperate to get past them.

62. After Ms Gold ran past them, he and the TAO took the car to the house. They placed a polythene sheet in the boot and put the goat on that, then drove back to the disinfecting point where they placed her in a plastic bag in the Land Rover, ready to take to the disposal site. As Ms Gold's car was between the Land Rover and the main road, they could not leave immediately. The TVI was disinfecting the wheels of his car when Mrs Green and Ms Gold came up, shouting angrily. The police officers and Mr Green were with them. The TAO took the family to the Land Rover to see the goat's body. While Mrs Green continued

to shout at the officials Ms Gold went back to the house and returned with a knife. There was a struggle and eventually the police officers arrested Ms Gold and took her to the Police Station.

63. The TVI was not asked to serve a Form A on Mrs Green, although he had the forms in his car and could have served one if necessary. Although he thought it sad that the goat had to be culled, he felt that the owners knew why this had to happen, and that they had had plenty of warning. FMD was confirmed on the neighbouring farm on 22 March, and by the time he visited the cottage it was 5 April. When the animals on the farm were slaughtered, it seemed that the vet in charge was unaware of the goat's existence, and it was unfortunate that he was not told at the time that there was another animal in the vicinity. Mrs Green had no agricultural holding number, the goat was not registered (see footnote 5 to paragraph 36) and so the Department did not know about the animal. She should, however, have been culled along with the animals on the farm.

64. The TVI said that no matter what Mrs Green believed, he was there to cull the goat that night. In the circumstances, a susceptible animal could not be allowed to live. He explained that goats are susceptible to FMD but do not show symptoms. They could, however, carry infection that they or the owners could transmit. If the goat had been allowed to live, other animals would have been in danger of being infected by her. The overriding consideration at the time was to get rid of the infection, and his actions were all carried out with that in mind. He was not allowed to blood test animals such as the Green family's goat, as the laboratories were overwhelmed by the need to test large herds for the disease. FMD is so infectious that in the time it might take to test a sample, one animal could infect many others. He believed it was not worth taking this risk. The TVI said that he had questioned the need for slaughter in other cases where he believed that it might not be necessary, but he was in no doubt that it was necessary to cull the goat as quickly as possible because she had been

in such close proximity to the infected animals on the farm.

65. Had Mrs Green agreed to the cull, he would have asked her and the police officers to be present. He did not ask the police officers to attend when he entered the shed, as he did not need them to be there. He felt that the Act enabled him to enter the shed to carry out his duties. He did this without telling the family because he felt that any other course of action would have been even more distressing both for the goat and for them. It was unfortunate that they would not agree, but as it had to be done, he wanted to do it in a way that would cause the least distress. In the circumstances, he felt that had the family been present it was very likely that there would have been a physical confrontation, which would have upset the goat. On reflection, the TVI did not think that he would have acted differently. He said that he put the goat to sleep with, he hoped, the least distress to the animal.

66. **The TAO** had recently retired from the Department after 36 years service but was asked to return because of his expertise in the local area. His main job was delivering supplies within the infected area, but on 5 April he was asked to assist the TVI in culling a goat because the Land Rover that he normally used was a suitable vehicle in which to remove the animal. He knew that there might be resistance because the Department had arranged for the Police to attend. When he reached the road beside the cottage the TVI told him that the family were still refusing to co-operate. The police officers went to the house to explain the procedures to Mrs Green. After a short while they came out and said that they could get no further than the TVI, although they had told Mr and Mrs Green that the TVI had the power to destroy the goat. They said they had given Mrs Green a short cooling-off period before they went back to try again. The TVI said that while the police officers were in the cottage he wanted to try to find and cull the goat.

67. The TAO confirmed the TVI's description of the events leading up to Ms Gold's arrival. She was upset, and had left her car behind his Land Rover with the engine running and the lights on. They met her close to the disinfectant mat. He said that he put his hand up and asked her to disinfect herself because she was entering an IP. He could not remember if he touched her or not, but said that his main motive in stopping her was to ask her to disinfect herself, as it was important that individuals disinfected both on entering and leaving an IP. In her desperation to reach the cottage, Ms Gold resisted and the TVI told her to let her go. The TAO could not remember what she said but said that she was screaming about her goat and was very distressed. He said that he did not shout after her, as she alleged.

68. He and the TVI moved the goat into the car and drove back up to the Land Rover, in which they placed her inside heavy-duty polythene bags. At this point, he would normally have left, but could not as Ms Gold's car was between his car and the main road. He agreed that he had not wanted to speak with Mrs Green, and that he had told her that he was only the driver of the Land Rover, as he did not want to get into an argument. His role that night was not to discuss policy, but to assist the TVI in carrying out the cull. This was why he was not prepared to discuss anything with Mrs Green. After Ms Gold was arrested, the TAO took the goat to the incineration site, as was required.

69. **The police Sergeant** said that for six weeks before the incident complained about, she and her colleagues had worked closely with Departmental officials on FMD matters. Police records showed that on 22 March FMD was confirmed on the farm. 103 cattle and a sheep were slaughtered, and the bodies burned on 25 March. On 27 March a woman telephoned to say that a goat was hidden in a shed at a cottage on the farm. On 5 April the Sergeant was told to attend the farm with the TVI, with the intention that the goat be culled that night. The TVI went in alone to try to persuade the family to agree to the

cull, but after about half an hour he phoned to say that they remained unwilling, and asked the police officers to come and assist him.

70. When they arrived at the house they found Mr and Mrs Green in the kitchen. The Sergeant tried unsuccessfully to reason with Mrs Green, who was upset and angry and insisted that the Department's actions were illegal. In the Sergeant's experience, Mrs Green was the first person to display such extreme resistance to a cull. The Sergeant had a photocopy of the Act with her, and had highlighted the part relating to the right of Departmental officials to enter premises, and to make a decision to slaughter. She showed this to Mrs Green, but thought that she did not really take it in. After a while, the Sergeant and her colleague went outside to allow matters to cool down and for Mrs Green to think about what she had been told. (As far as the Sergeant was concerned, her main duty was to maintain order while the TVI carried out his duty of culling the goat.) When they went outside, they met the TVI and the TAO. The TVI said that he was going to try to find the goat. The police officers went back into the house, and Mrs Green told them that her daughter was on her way home. Very shortly after that Ms Gold arrived. She was extremely upset, screaming that the goat was dead, and she attacked the Constable while he tried to restrain her.

71. The Sergeant said that the telephone call of 27 March (paragraph 69) indicated that the goat was in a shed, but they and the TVI had no particular plan of action about how to approach this. Neither she nor her colleague was present when the TVI eventually forced open the door and entered the shed, nor did they specifically plan in advance that he would do so. Under the Act, if the TVI and the TAO believed that FMD was present or likely to be present, or that they were in an agreed cull zone, then they could access premises, which could include forced entry. This was not ideal, but if it was the only way that they could gain access, then in her opinion it was covered by the Act. The Sergeant said however that if the TVI had

told her that he was going to force entry to the shed, she would have sought guidance to be sure that this was appropriate. The TVI had thus precipitated matters more quickly than she expected, although she was in no doubt that the final outcome would be that the goat would be culled. However, she had still hoped that it might be resolved more peaceably, with the family agreeing to the cull. (Note: my Officer also spoke to a senior police Officer who had investigated a complaint made by Mrs Green against the Police. He confirmed that no Police investigation was carried out into the method used by the vet to enter the premises.)

72. **The police Constable** said that on 5 April the Sergeant told him that he was to accompany her to assist Departmental officials, to ensure that no breach of the peace occurred while an animal was culled. When they entered the cottage, the Sergeant explained the TVI's powers under the Act and said that he could cull the goat because it was on an IP. Mrs Green continued to question the legality of that. The Constable thought that Mrs Green might have said that they had received no notice. However as far as he was concerned, that was not relevant because he believed this to be an IP. Almost every farm in the area had had their animals slaughtered - practically nothing remained alive. The Sergeant suggested that it would be easier all round if Mrs Green consented, but was getting nowhere. Mrs Green was using the phone a great deal while they were there, and seemed very excited and agitated. She seemed determined that her goat would not be culled, and would not accept that she would have to let the TVI carry this out.

73. When the police officers realised that they were not getting through to Mrs Green, they left the cottage and told the TVI. The TVI said that the decision to cull the goat had been taken and as it had to happen that night, he could not afford to delay any longer. He said that he and the TAO would therefore try to locate the animal. The Constable thought that, judging by what the TVI was saying, if he

found the goat he would probably kill it straight away. The Constable and the Sergeant returned to the cottage and asked Mrs Green for a key or access to the outbuildings where the goat might be located, but she refused. They explained that the vet was there to cull the goat that night, and that under the Act and Emergency Orders, the vet could carry out the cull with or without Mrs Green's consent. However, it would be better if she gave her consent, as the cull could then be carried out in a more suitable atmosphere. No consent, however, was forthcoming.

74. The Constable said that he could see why Mrs Green felt that the police officers were used as a diversion. While he did not feel that it was intentional that they were talking to her while the TVI culled the goat, with hindsight it was not a bad thing to do. It seemed unlikely that Mrs Green would agree to the cull, and the atmosphere was very tense. If the TVI had come in and said that he had found the goat and was going to cull it, a breach of the peace would have been extremely likely. Because he went and did it in relative calm it was better both for the goat and the family.

#### **Evidence from Departmental staff**

75. My Officer interviewed four other members of the Department's staff who had responsibilities in connection with FMD. I refer to these officials as Officers A, B, C and D. Officer **A** said that when the Green family's goat was culled, he was acting as Regional Operations Director (ROD) in Dumfries. He was a member of the Disease Strategy Group providing advice on policy matters direct to the Minister. As ROD, he took policy decisions and put them into operation, along with the Army and veterinary officers. He managed operations, including public relations and liaison, and was responsible for the infrastructure of the cull. Although operations were complicated by the rapid spread of the disease, they normally did their best to cull out an IP within 24 hours of notification, and a contiguous or 3km area within 48 hours.



76. The local Senior Veterinary Officer, the Army Commanding Officer and the Council met regularly in Dumfries. One of the issues discussed was how they should handle resistance to the cull. Usually when the TVIs explained the need for the cull, the owners agreed because they saw the need for the policy. In some cases, where such explanations did not achieve agreement, a senior Officer visited the owner to discuss the strategic need for the cull. This only applied to a very small number of cases, and the Greens' was not one of them. Officer A said that compensation was normally assessed and agreed before slaughter, so it was possible that Mrs Green's understanding that she had to sign something first had arisen from that, although he also said that goats were not normally valued. Mrs Green would not have been allowed to bury her family's goat because the virus could continue to be present on the coat of the animal after death. This was why culled animals were disposed of only in authorised sites and by burning or rendering.

77. Officer A said that the goat was clearly a dangerous contact as her pen was adjacent to an IP. Even if where she was kept was not part of the IP, it was certainly contiguous to it *and* within 3km, and thus met other criteria for the cull policy. In retrospect he was confident that culling was the appropriate option in this case. Officer A said that on the night in question the TVI had to cull the animal as soon as possible, and to do so he clearly had to use his initiative.

78. Officer B said that from 18 March to 11 May 2001 he was the SVS temporary Divisional Veterinary Manager (DVM) in charge of the 3km and contiguous culls of animals in Scotland. He supervised the identification of premises within 3km of an IP. Staff contacted owners within the 3km radius, told them that they were coming to slaughter the animals within the next few days and asked them what equipment would be needed to carry out the cull. Staff then tried to phone 24 hours before the actual day of the cull, in order to give fair warning, although this was not always possible. On the day of the cull, teams

of SVS, Departmental and Army personnel went to the premises, valued the animals, then culled them and removed the bodies for disposal. After the animals were removed, a basic cleaning and disinfection process was carried out on the premises. Another team completed a full cleaning and disinfection process later. Whilst the goat was culled by the outbreak team, Officer B suggested that the reason that cleansing and disinfection of the premises was not pursued could have been that the veterinary risk analysis indicated that the risk of significant viral contamination to the environment was very low, the high feelings in this case and the period of time that the premises would remain empty.

79. The Minister had insisted that the cull was quickly and strictly implemented, as exempt areas would have been dangerous corridors that could have allowed the virus to escape. There was not enough laboratory time available to test all animals, and comprehensive testing would have delayed the culling process. Speed was of the essence, as each infected animal left alive could easily infect many more. Officer B said that the animals being culled were often a farmer's life's work. He could understand why people appealed, or why they were distressed by the decision to cull. FMD, however, was a very dangerous and unpleasant disease which caused animals enormous suffering and it had to be dealt with urgently.

80. Vets were given instructions about what they should do if they encountered resistance. They were to explain the policy and the reasons for the cull to try to convince the owner that it was necessary but if their safety was compromised they were to pull out and contact the Police. Ultimately, if the owner refused to co-operate, entry could be forced through the powers of the Act after liaison with the Police, but this only proved necessary in a tiny minority of cases. The cull would only be halted if an owner applied for Judicial Review, and then for only as long as that process took.

81. Officer B believed that the Green family's goat fell into almost all of the categories under which a cull was appropriate. If the premises were *not* regarded as an IP, she was clearly a dangerous contact, or could be taken under the contiguous cull because the farm completely surrounded the premises on which she was kept. Equally it could be argued that she could have been taken under the 3km cull as she was within 3km of the IP. There was a real risk that she had been exposed to FMD virus, and the TVI therefore had the right under the Act to carry out the cull that night, with or without the agreement of the family. There was no requirement for any period of notice to be given, and every effort had been made to explain the need for the cull to the family. On the night of 5 April, culling was always going to be the outcome, unless Mrs Green had applied for a Judicial Review of that decision. It would have of course been preferable to obtain consent, but SVS had already put considerable effort into trying to obtain this, and resources were very stretched because of the scale of efforts to contain the disease. At the end of the day, vets had to enforce the policy of Scottish Ministers in order to get the disease under control, to minimise both human and animal suffering.

82. Officer C said that during the FMD outbreak, he was promoted to temporary DVM and seconded to Dumfries. He was responsible for most of the work of the TVIs employed during the FMD outbreak, such as the TVI who culled the Green family's goat. Officer C managed, advised and guided the TVI group, and allocated them to various jobs. On request, he provided vets to oversee slaughter by the cull team.

83. Officer C said that by 5 April, the family had been contacted and warned about the cull at least three times but they still refused to agree to it. FMD had been identified close to the cottage and the clock was ticking in terms of dealing with the disease. The TVI and the TAO were told to go and make it clear to the family that they were there to cull the goat, and that if there were any problems the police were to be called. In these circumstances it was normal for police officers to

be on standby to support TVIs in enforcing their powers.

84. Officer C believed that the goat was a dangerous contact. He explained that Sections 31 and 32 of the Act say that during an epidemic assessment a person or animal is deemed a dangerous contact if there is reason to consider that they have been exposed to FMD. The farm beside the Greens' home was clinically confirmed as an IP. Tests on samples taken from animals there proved positive for FMD virus. After the farm was culled out, the Department became aware that there was a goat on the premises, which was not registered on SAGRIMO. Had the animal been registered, a Form D (served on premises considered to be "at risk") should automatically have been issued as soon as an IP was declared.

85. Officer C did not know why Mrs Green believed that she should have been given 24 hours notice of the cull or written notice of it. The Department had given her more than adequate notice and officials had gone to her home to explain the reasons for the cull. Asked if he thought that it would have been reasonable for her to assume, as a member of the public, that written authorisation was necessary, he said that the Department considered that the notice given to Mrs Green was more than reasonable. In the circumstances he was surprised that she considered trying to retain an animal on an IP, as the virus could still be present. The family did not seem to understand what was at stake, and simply insisted that they were in favour of vaccination, and against the killing of apparently healthy animals. It was not Scottish Executive policy to take blood samples from single animals to check for FMD, or to vaccinate. At the time FMD seemed to be rampant, and they had to adopt the quickest method of halting its progress. The goat was so close to a place where the disease had been identified that she was clearly at serious risk of being part of the epidemic, and it would have been impossible for the farmer next door to re-stock with the goat still present.

86. As far as he was aware, no notices were served on Mrs Green. Normally, when an animal was traced to different farm premises and classed as a dangerous contact, a separate Form A would be served there. The Department, however, considered that the original Form A served on the farm included the goat, even though it was not served on the occupier of the cottage. He explained that Form A did not specifically relate to the cull. As there was no requirement on the Department to serve any kind of written notice in advance of culling, owners of animals included in an FMD cull could not expect to receive a document specifically telling them that the animals were to be taken.

87. Officer C felt that it was always clear that the situation was going to be difficult. This, however, was a suspect animal and they were authorised to do what they did. At that time (the first week in April) it was not clear that the disease had been conquered, so there was no time to lose in carrying out the cull. The TVI was operating under the powers of the Act and was within his rights to enter the premises. He had clear powers of entry, especially with the Police present, and had not exceeded his powers under the Act, as the Minister's policy was that any live susceptible animal remaining on an IP had to be culled. Although Officer C would not have specifically told the TVI to act as he did, he would certainly have expected him to gain access to the goat, supported by the TAO and the police officers. Asked if he would have expected the police officers to be at the shed when the TVI entered it, Officer C said that he did not think that this would have been absolutely necessary. He also said that, if asked, the Department would have found it acceptable for the family's own vet to cull the goat.

88. The Green family's goat was not valued at the time of the cull because the TVI had said that he felt that discussing the valuation was likely to inflame the situation. Since then, the Department had tried to agree a valuation with Mrs Green, but she had been unwilling to discuss the matter.

89. Officer **D** said that during the outbreak he had held more than one post, mainly within the Department's Head Office in Edinburgh. He said that the Department's files and correspondence showed that Mrs Green had not understood that she had reached the end of the line in her attempts to save her family's goat. She was clearly expecting to receive something in writing before the animal could be taken. Normally a valuer would attend before a slaughter team arrived, to provide a compensation valuation, which was given to the owner in writing with an appeal form. The owner then had 14 days in which to appeal the valuation. It was possible that knowledge of this practice could have led to Mrs Green's expectations. She was not given any such paper work in respect of her family's goat, because it would have been insensitive to do so, bearing in mind the distressed state of Mrs Green and Ms Gold at that time. However, it was clear from the papers that Mrs Green was given proper notice about the cull on 2 April. After this there was a short delay while the matter was reviewed. On 4 April the Department confirmed that the cull should go ahead.

#### **Information from the Department's files**

90. Copies of the warrants given to veterinary inspectors were contained in the papers provided by the Department. These warrants give such inspectors authority to "exercise any rights of entry ... mentioned in the Act". The preliminary report of the notification of FMD on the farm adjoining the cottage shows that a TVI visited there on 21 and 22 March 2001. Question 9 of that report asks for particulars of animals on land contiguous to the IP, and whether or not Form D notices had been served. The answer reads "1 goat [at the cottage, the farm] (+1 horse) - no form D – see map." A hand drawn diagram of the location of the cottage in relation to the farm was attached. Because the report is undated, however, it is not possible to ascertain whether or not this entry was written at the time of the visit to the farm. FMD was confirmed at the farm on 22 March by visual

inspection and report, and the farm was culled out that day. Samples from the cattle were sent for laboratory testing and analysis. On 23 March documentation, which my Officer examined, confirmed that Type O FMD virus was present in the cattle.

91. After Mrs Green complained, the Department took legal advice from the Office of the Solicitor to the Scottish Executive (OSSE) about the TVI's actions. OSSE said that the legal authority for the right of entry came from Section 66 of the Act (see paragraph 10), although generally this was expected to be with or by the Police. The legal advice was that throughout the outbreak, entry to a lockfast place was generally regarded as acceptable, provided that those places were made fast again, and Scottish Ministers met the cost.

## **Complaint 2 – The Department's handling of Mrs Green's complaint and related correspondence**

### **Mrs Green's evidence**

92. On 14 April 2001 Mrs Green wrote to the Department to complain about the way in which her family's goat was culled. The Head of the Agriculture Group at the Department (the Group Head) acknowledged her letter on 20 April, and said that he was arranging for the matter to be investigated. She also wrote to MAFF and to the Prime Minister, copying some of these letters to the Department. On 29 May she wrote again to the Group Head asking when she could expect to receive a reply, then again on 14 July (copying to him a letter about the valuation – see next paragraph) when she had still heard nothing. On 23 July, she received a letter apologising for the delay. She then heard nothing until the Department eventually replied on 16 November. Mrs Green disagreed with several of the points in that letter and was not satisfied that her questions about the matter had been answered properly.

93. Despite making telephone enquiries to the Dumfries and Ayr Departmental offices, Mrs Green received no advice about what she

should do with the goat's bedding and feedstuff, or about disinfecting the shed area. On 27 April she wrote referring to one of these conversations and asking for compensation for the goat and for a number of other items, including the repair of the broken door and distress caused by the whole event. On 13 July, the Department's Dumfries office sent a valuation form in respect of the goat, asking her to sign and return it, or to dispute the valuation within 14 days. Mrs Green replied on 14 July saying that she wanted to know why valuation was not discussed on the night of the cull, disputing the facts in the valuation form and disputing the valuation itself. She also asked about procedures for dealing with remaining items that might carry infection. On 26 July she received a letter saying that the matter had been referred to the Department's Head Office. Mrs Green said that her Member of Parliament (MP) and Member of the Scottish Parliament (MSP) had also written on her behalf, and had sent reminders but had received little information either.

### **Ms Gold's evidence**

94. Ms Gold also wrote to the Department several times. On 24 September 2001 she sent the Minister a list of 36 questions about the events surrounding the cull. She said in her letter that these questions had been sent to him before but remained unanswered, as had letters from her MP and Member of the European Parliament. She also pointed out that her solicitor had written to obtain information from the Department without success. Officer D sent a detailed reply on 26 October, apologising for the delay and saying that the Department could not find her earlier letter to the Minister. Ms Gold also made numerous telephone calls to the Department.

### **The Department's response to the complaint to the Ombudsman**

95. The Head of the Department said that on 14 April Mrs Green complained to the Group Head about events surrounding the cull. On 20 April the Group Head acknowledged her letter and said that he was



investigating her complaint and would write again. He requested full details of the incident from the Animal Health Office in Ayr, but when he got their response, he felt that it did not fully explain the circumstances so he asked for further investigations and a more detailed draft reply. He also asked Officer A to provide information. The Group Head was taken ill in June and was on sick leave for some time. As no-one had copied Mrs Green's complaint to the Departmental Branch with the main responsibility for handling FMD correspondence, it was not followed up. After Mrs Green wrote again, an Officer acting on the Group Head's behalf sent an interim reply on 23 July. The Head of the Department said that although Mrs Green's correspondence raised difficult issues that had to be thoroughly explored, this only explained part of the delay. At the end of August a number of letters that the Department should have handled were found to have received no reply. (Note: Mrs Green's original complaint was not within this batch of correspondence, but reminder letters were. The discovery of these prompted a check on her original complaint.) The Department then asked SVS to submit a full report of events, which Officer B prepared. The checks that had to be made to ensure the accuracy of the information then meant that the final reply took time to prepare, but ensured that it was "full, detailed and accurate", and the Department sent Mrs Green a substantive reply on 16 November. The Head of the Department said of the delays "It should be appreciated that all the officials concerned were working under exceptionally heavy pressure both during the foot-and-mouth outbreak and in the period immediately following it ... I acknowledge that this [delay] is totally unacceptable but stress that this was due to organisational and administration problems rather than any attempt to conceal the truth."

### **Other evidence from the Department**

96. Officer **A** said that in late April 2001 the Group Head had asked him to investigate the background to Mrs Green's letter to inform the Departmental reply. Officer A sought advice and information from

different areas of the Department and SVS, and wrote to the Police about their role. The Police took some time to respond and eventually said that they could not comment because Ms Gold's actions had been referred to the Procurator Fiscal. In the meantime several other letters from Mrs Green and her daughter arrived in Animal Health and Welfare Branch (AHW Branch) which was responsible for dealing with much of the correspondence on FMD. In June 2001, before a reply was ready, the Group Head went on sick leave, and another Officer took over his duties temporarily. Officer A was not sure what had then happened to the correspondence. Normally most letters came straight to AHW Branch, but Mrs Green and her daughter had written to many different people and departments across the UK at the same time. Even within the Department, Mrs Green wrote both to Dumfries and to Head Office, which complicated the reply process. Although there was a long delay in replying, he felt that, given the accusations that Mrs Green was making and the number of questions being asked, it was preferable to provide a comprehensive response. It was the Department's responsibility to respond properly. To do so they had to get information from those who were actually there during the events about which Mrs Green complained. He felt that some of the delays might have been avoidable, but everyone was very busy and it was a very difficult time. He personally also had to deal with issues of disputed compensation, or examples of damaged property. Mrs Green declined the original compensation offer and did not come back to him about this matter.

97. Officer **D** said that for most of the time between February and May 2001, he was based at MAFF in London, helping to co-ordinate work on FMD between the Department and MAFF. Between 16-20 April, however, he returned to Edinburgh for a week as assistant to the Group Head. The Group Head handed him Mrs Green's complaint letter of 14 April, saying that he wanted to send an interim reply immediately because of the letter's importance. Officer D's first impression was that if the information it contained was an accurate

description of events, it was of great concern. On 20 April he arranged for an acknowledgement to be issued, and asked Officer B for details in order to prepare a reply. Before returning to London, he left a copy of his note to Officer B in the in-tray of the colleague whom he had replaced for the week, saying that it might need to be followed up shortly.

98. Officer D returned to the Department's Head Office permanently in June 2001, and moved to head up AHW Branch which included the responsibility for dealing with FMD correspondence. In mid-August, he discovered that there had been a "glitch" in handling correspondence to which the Department needed to respond. Around 600 letters sent to Ministers by members of the public, MPs and MSPs had not been answered. Normally, the Scottish Executive's Central Correspondence Unit (CCU) forwarded such correspondence to the Department by email, with a copy of the scanned letter electronically attached. This was downloaded, and the letter printed out and answered. The Departmental Officer who was supervising correspondence handling in AHW Branch at that time had, however, changed this practice in an attempt to respond to the exceptionally high level of correspondence during the FMD outbreak. She and CCU had entered into an unwritten agreement that CCU would forward all letters in hard copy, as well as sending them in email form. The hard copy letters would be replied to, and the emails would not be opened.

99. The system broke down because hundreds of letters in email format were not duplicated in hard copy, and received no reply. During the FMD outbreak the number of hard copy letters received increased significantly, and so it was not immediately obvious that some had only been sent in email format and overlooked. As soon as he realised what had happened, Officer D arranged for all the unanswered emails to be downloaded and printed, and for replies to be sent.

100. It was during work on this backlog that numerous letters and reminders from Mrs Green, Ms Gold, and from MPs and MSPs writing on their behalf, were discovered and Officer D realised that Mrs Green's original letter (for which he had drafted the acknowledgement for the Head of Group to send) had still not been answered. Some of the letters in the backlog raised new questions in addition to those in the original complaint, and there were letters from Ms Gold's lawyers asking for information relating to an impending court case. Officer D firstly dealt with the letters from Ms Gold's lawyers. He retrieved Mrs Green's original letter from Officer A at the end of August, and started to gather the information needed to answer the questions that it raised. For example, he asked Officer B for a full report including information from SVS about what had happened. He also needed to obtain legal advice on various aspects, such as whether or not the place where the goat was kept was deemed an IP, a contiguous premises, or part of the 3km cull; whether or not appropriate notices had been served, and whether or not she should have been registered. Part of the delay arose while obtaining this legal advice. By the time the letter reached the reply stage, it had gone through many redrafts. The final reply was cleared with Scottish Executive lawyers.

101. Officer D was unable to explain why no-one responded to the original letter earlier, and said that it seemed to have become lost in the administrative system after the Group Head passed it to Officer A. The information required to answer the letter had to be obtained from many different sources. He thought that because of the pressure of other work at this difficult time, the requests for information might not have been seen as a priority in relation to the ongoing work on FMD itself. He thought it likely that if it had not been for the glitch in the correspondence system, the omission would have been noticed a month or so earlier. He could have sent a shorter reply to Mrs Green four weeks before his actual reply on 16 November, but he had decided at an early stage that he preferred to give a full response to

the original letter. The delay in replying to the letter was clearly wrong, but the office was inundated with correspondence at the time. During the FMD outbreak, AHW Branch received thousands of extra pieces of work, including letters from the public, Ministerial correspondence, and briefing requests for answers to Parliamentary Questions from MPs and MSPs, all in addition to the work that the unit dealt with before FMD.

102. Officer **B** said that as well as having responsibilities in Dumfries (paragraph 78) he had worked at the Department's Head Office as an adviser in the Veterinary Policy Unit from 12 May to 28 October 2001. During this period he collated veterinary information to help respond to Mrs Green's letters. He agreed that there was a considerable delay in replying to Mrs Green's original complaint although he believed that SEERAD had every intention of investigating the matter. He was not in a position to explain why Mrs Green was given no information about disinfecting when she enquired, I but said that veterinary risk analysis indicated that once the animal had been culled the risk of significant viral contamination of the environment was very low. Consequently, bearing in mind the high feelings in this case and the period of time that the premises would be empty, a decision was taken not to pursue disinfecting of the premises.

### **Evidence from Departmental files**

103. The Group Head received a first draft of the proposed reply to Mrs Green's complaint on 26 April. On 30 April he wrote to a colleague saying that he was not satisfied that he had all the information he needed to respond fully, and sought more information, including legal advice from the Scottish Executive's solicitors. In particular, he asked Officer A to investigate three points – how the TVI gained access to the shed, the treatment of Ms Gold by the TAO, and the allegation that police officers prevented Ms Gold from leaving the house. The Police told him on 2 May that they could not reply, as the matter was *sub-judice*.

104. The Department received a reminder letter from Mrs Green dated 14 July. Notes in the file dated 18 and 19 July say that Officer A had not managed to respond before going on leave (Note: it is not clear if this refers to a response to the reminder, or to the original complaint) and that the papers had been passed from him to another official (Officer E) that week. Officer E noted in the file that Mrs Green had received no acknowledgement, and wrote to her on 23 July. In this letter Officer E explained that she was acting for the Group Head, who was unwell, and said that she would now examine the complaint urgently. (Note: in a telephone call to the Department's Head Office, my Officer was told that Officer E went on annual leave on 13 August. At that point, her responsibility for the case ended, and at some point after this the file was returned to Officer A. It was not possible to determine from the files exactly when this happened.)

105. On 21 August, the Department received a letter from Ms Gold's solicitors about another matter. When considering this, Officer D noted that a final reply did not seem to have been sent to Mrs Green, and asked Officer B and others for information. Over the next two months, information was gathered, and legal advice obtained in order to respond to both Ms Gold's list of questions and Mrs Green's complaint.

106. The files contained several drafts of the letter responding to Mrs Green's complaint. A number of these drafts were referred to OSSE for legal guidance before the reply was finally sent. There were also many internal minutes, which make it clear that considerable information was gathered in order to reply to both Mrs Green's letter of complaint and Ms Gold's list of questions.

107. Officer D replied to Ms Gold on 26 October. His letter answered the questions that she had raised. In particular, it gave reasons why no disinfectant procedures were put in place at the cottage after the

family's goat was culled, which included staff safety and the low risk of disease being transferred. Officer D also replied to Mrs Green's complaint, on 16 November 2001. He explained the reasons for the cull and the efforts that the Department had made to explain matters to her before it took place, and gave the Department's account of the events of 5 April. He said that compensation for the goat was not mentioned that night because it was deemed to be insensitive after what had happened, but that a valuation had since been offered and was currently under dispute. He offered compensation for the damage to the shed door and for the value of the goat's feed, but not for other items that Mrs Green had claimed.

### **Findings**

108. I set out my findings in relation to Mrs Green's complaint in Section Six (paragraphs 160-180).

## **Section Five**

### **Investigation of Mrs White's complaint**

109. Mrs White complained that the Department did not follow procedures relating to the culling of her sheep during the FMD outbreak and did not compensate her fully for her loss. She considered that her sheep, some of which were on the Rare Breeds Survival Trust list, were of such genetic merit and rarity that they should have been exempt from culling - or at least considered for exemption. (Note: sheep belonging to Mrs White were culled at three different locations, which in this report I refer to as the first, second and third locations. Sheep at the first and second locations were culled on 13 April 2001 and at the third location on 14 April. The land Mrs White used at the first and third locations was owned by the same person, who I refer to in this report as "the farmer".)

#### **Administrative background**

110. The general administrative arrangements for dealing with FMD are explained in paragraphs 13-15. Additionally, there are two sets of documents which are relevant to Mrs White's complaint. The first is an Emergency Instruction (EI 2001/85/VEXDT) issued on 11 April 2001 and headed "Slaughter of sheep, goats and pigs on premises within 3km of an infected premises in the Carlisle/Solway and Lockerbie areas". I refer to this as "the EI". It states that in all 3km areas the general cull principle might be modified in the light of serological surveillance (ie blood tests). It also says that it might be reasonable to exempt flocks of particular genetic merit, subject to individual assessment, isolation and repeated serological testing. It adds that if an owner resists the cull on the basis of breed or genetic merit, a decision should be deferred while the owner arranges for their own vet to visit and make a case for exempting the animal.

111. The second set of documents relevant to Mrs White's complaint



was issued by a senior official at the Department's Head Office (Officer F). I refer to these as "the F Papers". These comprised:

- i) a minute of 10 April 2001 by Officer F. This enclosed three documents:
  - a) "Information note – Foot-and-mouth Disease: slaughter policies', 3 April. This set out various policies in respect of premises which were within a 3km zone or contiguous (ie next to a premises where FMD had been confirmed). In respect of 3km premises, it stated that all sheep on farms within 3km of any infected farm in Dumfries and Galloway would be culled;
  - b) "Instruction to DVMs [and others] – Foot-and-mouth Disease: slaughter policy on contiguous premises', prepared by two senior DEFRA officials, 6 April. This related solely to contiguous premises;
  - c) "Foot-and-mouth slaughter – note on enforcement and slaughter powers". This related solely to contiguous premises;
- ii) a minute of 11 April 2001 from Officer F, saying that the information note a) above was to be regarded as applying to the Galashiels area as well as to Dumfries and Galloway.

### **Chronology**

112. I now set out a chronology of the main events relevant to Mrs White's complaint:

**6 April** FMD was confirmed in Mrs White's area.

**7 April** A Form D was signed by a Departmental official and served by

two others on Mrs White at a pre-arranged time.

**8 April** Mrs White wrote appealing against the Form D.

**10-12 April** In a letter of 3 May to the Divisional Veterinary Manager (DVM), the Principal Agricultural Officer (PAO) said that Mrs White's appeal of 8 April against the Form D had been considered at a strategy meeting on 10 April (involving the Department, SVS and other agencies), where it had been agreed that he would contact Mrs White to explain why her sheep had to be culled. He therefore phoned her at about 12.30 pm on 11 April and left a message on the answer phone. When he phoned again at 1.30, Mrs White's husband answered but made it clear that he would not discuss the matter then or at any time. The PAO said he left an answer phone message at 9.15 am on 12 April but received no return call.

**12 April** The Whites' refusal to discuss matters was considered at a strategy meeting, and it was decided that the PAO would make one more attempt at contact, this time with the Police. Arrangements for the valuation and disposal of the sheep, once culled, were discussed.

**13 April** The PAO and a colleague visited Mrs White's home but could get no response. They therefore put a Form A notice through her letterbox. Her sheep at two locations were then culled. Samples were taken for testing at the Institute for Animal Health to determine whether the sheep were infected (as a positive result would have determined the need for a new 3km cull zone to be set up around Mrs White's premises).

**13 April** At the strategy meeting, it was noted that sheep which were thought to belong to Mrs White had been discovered at the third location. Urgent action was advised.

**14 April** Mrs White's sheep at the third location were culled. A Form

A had been signed at 9.43 am, which a TVI (whom I shall call TVI A) delivered to Mrs White in the early afternoon. As on the 13<sup>th</sup>, samples were taken for testing at the Institute.

**21 April** The DVM sent Mrs White the inventory and valuation of the culled sheep, inviting her to appeal against the valuation amount if she felt it to be incorrect.

**26 April** The Minister announced in the Scottish Parliament some policy relaxation because of the progress which had been achieved through the rigorous cull.

**26 April** In a letter to the DVM Mrs White complained that the valuation of the sheep was inaccurate because the valuer had no knowledge of rare breed sheep such as hers. Contrary to procedures, she had not been given the chance to appoint her own valuer. She reminded him that she had never had a reply to her appeal against Form D.

**30 April** The Institute for Animal Health reported that the samples taken on the 13<sup>th</sup> and 14<sup>th</sup> from Mrs White's sheep had tested negative for FMD.

**3 May** The DVM asked Mrs White to provide her own estimate of her sheep's value. Mrs White did so on 6 May, and on the 11<sup>th</sup> the DVM acknowledged that he had passed the details to the Department Appeals Unit at Head Office.

**21 May** Mrs White complained to the DVM that procedures had not been followed, for example that she had not been given the chance to appeal against the cull at the third location because the sheep had already been slaughtered when she received Form A. She repeated her complaints about the valuer. She also requested a map to demonstrate a point the DVM had made about the third location. The

DVM sent this on 25 May, showing a circle of premises within 3km of the premises at which FMD had been confirmed on 6 April.

**30 May** Mrs White wrote alleging that, because the 3km line on the map was inaccurately drawn, her land at the third location was wrongly shown to be within the 3km cull zone.

**22 July** Mrs White complained to the Head of the Department about local officials, in particular that some of her sheep had been slaughtered despite being outside the 3km cull zone and that Head Office had never given an answer about her compensation.

**3 August** The Head Office appeals unit wrote apologising to Mrs White for the delay in processing her appeal against the valuation. The Officer offered Mrs White a second valuation and explained that this could resolve the matter and would avoid the potential costs to Mrs White of arbitration but would not prejudice Mrs White's right to arbitration. Mrs White replied on 7 August that as the sheep no longer existed, they could not be valued. The officer's reply of 16 August explained that a second valuation would be carried out by an independent, senior and experienced valuer of the Institute of Auctioneers and Appraisers, who would arrive at a valuation based on the original one and on the market value at the time of slaughter of animals similar to Mrs White's. The Officer added that the Rare Breeds Survival Trust had confirmed the original valuation as fair and asked Mrs White whether she wanted a second valuation or to go at this stage to arbitration.

**10 August** DEFRA responded to the Royal College of Veterinary Surgeons (RCVS), who had received a complaint by Mrs White about some aspects of the cull operation and who had invited DEFRA's comments. DEFRA enclosed the EI and said it had been issued to DVMs in Carlisle and Ayr and copied to other DVMs. The letter also explained that Scottish policy was to cull sheep within 3km of an

infected premises and that instructions to SVS staff in, for example, Galashiels were issued (the F Papers) to “supplement” the EI. The letter added that staff instructions were mandatory. Drafts of the letter had previously been sent to SVS Head Office officials in Scotland for comment.

**17 August** The Head of the Department replied to Mrs White's letter of 22 July, apologising for the delay. He said he was aware that local officials had been in correspondence with Mrs White and her Member of Parliament over the previous few months about her concerns. He explained why her sheep had not been exempt from the cull and confirmed that her holding at the third location was deemed to be within the cull zone. This was because of the Department policy that if a holding was mainly within 3km of an infected premises, all the sheep on that holding had to be culled. There had been some exemptions but Mrs White's sheep had not been considered for exemption because they were not on the Rare Breeds Survival Trust list. The delay in processing the compensation appeal had occurred because of the high volume of work and appeals generated by FMD.

**19 August** Mrs White wrote disputing the Head of the Department's letter. On the same day she also wrote telling the appeals unit Officer that her proposals about a second valuation were unacceptable and that her own valuation of 6 May to the DVM should be accepted.

**12 October** In reply to a letter from Mrs White's MSP, the Minister included the information that unless his officials heard from Mrs White to the contrary, arbitration proceedings would be commenced to determine the valuation and compensation.

### **Mrs White's evidence**

113. In putting her complaint to my predecessor's Office, Mrs White gave the following account:

- (i) The local office failed to follow the instructions in the EI and the F Papers.
- (ii) On 7 April 2001 she received a Form D in respect of her rare breed sheep at two locations and was told that a vet would be in touch within a few days to inspect them. However, no such contact was made. On 8 April Mrs White appealed to the Department's local office against the Form D. She received no written reply despite requesting one several times from the local office and Head Office.
- (iii) On 11 April a local official (the PAO) phoned. When Mr White told him they were awaiting a reply to their appeal, the PAO refused to discuss it. He suggested a meeting but did not state its purpose nor did he say that any sheep were to be killed.
- (iv) On 13 April, on returning home, Mrs White found that during her absence a Form A had been hand-delivered for one of the locations. A Police car was blocking the driveway to prevent her going to the sheep. Procedures were not followed in that those sheep were already being killed so she had no chance to ascertain the result of the appeal or to choose a valuer.
- (v) On 14 April a TVI (TVI A) delivered a Form A for the sheep at the third location saying that they had already been killed. As the Department had not mentioned culling there, Mrs White had no chance to appeal or to choose a valuer. The culling at the third location should not have happened: the Form A was not delivered until after the sheep had been slaughtered; the Form A falsely claimed the premises to be infected; no vet had tested the sheep for FMD; and the location was outside the 3km cull zone. A map later provided by the Department to show that it was inside the zone had been doctored. Despite many requests the Department had still not provided a legible copy of the

Geographical Information Systems (GIS) map which Mrs White believed showed accurately the 3km circle.

- (vi) The valuer appointed by the Department had no knowledge of rare breed sheep and thus calculated an inadequate valuation level on which the Department would base Mrs White's compensation.
- (vii) She had still not received an offer of full compensation.

114. Mrs **White** and her husband expanded on the above at interview with my officer. They said that they had spent years in building up their small flock of rare breed sheep, many with irreplaceable pedigrees. One, for example, was the only one of its kind in Scotland.

115. Mrs White had complained that the Department had not followed the procedures in the EI and the F Papers, which she had received from DEFRA via RCVS. Although the EI was headed as applying to the Carlisle/Solway and Lockerbie areas, Mrs White said she believed it also applied to her area. This was because although appearing to relate only to Dumfries and Galloway the F Papers indicated that they also related to the Borders region (including the Galashiels area). (Note: the F Papers were not in fact part of the EI. Thus, the minute which related the F Papers to the Borders did not cover the EI. The EI, therefore, never related to the Borders.)

116. Mrs White's husband added that the EI included a notice of culling to tell owners that their animals were to be culled. Procedures had been breached because this had not been issued in this case. He produced a copy for my officer. (Note: it was indeed such a notice. However, it was not part of the EI: it was one of the F Papers. Nor was it relevant in this case as it related only to animals which were contiguous to an IP. None of Mrs White's sheep were contiguous. Thus there was no procedural breach here.)

117. On the subject of the Form D of 7 April for the first two locations, Mrs White explained that the Department contacted her that day saying they wished to serve the notice. It was agreed that this would be done at a local phone box, where two officials issued a Form D for each of these locations and said that a vet would contact her within a few days. However, that never happened. A solicitor friend told her that no Form D should have been served as the animals had not had contact with infected ones. On his advice she padlocked her field gates because he said that, as she had shown by her appeal letter that she objected to her sheep being culled, the Department could not then enter those fields without her permission or a Court Order unless the animals had FMD. Mrs White and her husband said that their understanding was that the Department could not cull their sheep without examining and blood testing them, which they could not do without the Whites' permission. (Mrs White's husband did, however, acknowledge at interview that he realised that neighbours' sheep were being culled without inspection or testing.) Mrs White also said that because the sheep were lambing she was checking them daily and so knew they were not infected.

118. The Whites were in close contact with the farmer (paragraph 109). On 11 April he phoned to say he had heard that her sheep were to be culled. It was then that the PAO phoned and spoke to Mrs White's husband. Because they were still so shocked by the farmer's news and because they wanted the result of the appeal, Mrs White's husband told the PAO there was no point in meeting before having that result. Mrs White did not respond to the PAO's later answer phone message simply because they were overwhelmed with work. FMD movement restrictions meant that they could not bring the lambing sheep to one location but had to travel to them at three separate locations, each five miles from the other. Finding out about FMD and its progress locally took up the rest of their time. Moreover, Mrs White did not want visitors because of the risk of disease spread.



119. At around this time an official phoned to ask if Mrs White wanted the use of a Department valuer. When she replied that she still awaited her appeal result, the official said she would look into it and contact Mrs White again, but nothing more was heard.

120. Turning to 13 April, Mrs White and her husband said they were out dealing with the animals. As Mrs White returned, approaching the back of the house, she thought she glimpsed vehicles at the front. She fetched her husband and, on return, they saw that a Form A had been put through the back-door letterbox. She considered that this notice should not have been served because it stated that her sheep were infected yet the Department were not in a position to say this, not having done any inspection or blood test. Indeed, as she knew there had been no tests, she found it strange when a Department vet later told her that the samples taken from their sheep and tested by the Institute of Animal Health were negative. She saw this as part of the Department's general mismanagement of the facts. Other examples of their procedural failures were that the sheep were slaughtered while her appeal was outstanding, which also meant that she had no chance to choose her own valuer.

121. Having seen the Form A, Mrs White and her husband went through to the front of the house and saw two policemen who were in a car parked across their drive but who denied being there to prevent the Whites from leaving. The farmer phoned at this time to say that the cull of the sheep at the first location had started but that the Whites should stay away to avoid picking up any infection.

122. Mrs White thought her sheep at the third location were safe because that evening the farmer phoned to say the PAO had told him the 3km cull was now complete – and because the farmer had previously told her that he had seen the cull teams' map, showing the third location as being well outside the 3km circle. Moreover, she had

received no Form D for the third location. It was therefore a particular shock when the farmer phoned at about 10.00am on 14 April to say that those sheep were at that moment being slaughtered. She had had no chance to appeal against this, nor to choose her own valuer. She phoned the Disease Control Centre, who said they had sent a Form D to the third location – to someone whose name Mrs White recognised as a tenant who had left years earlier. Neither had the farmer, as the landowner of the third location, received any Form D for Mrs White's two fields there. All these points, together with some administrative errors which she later found on the Department's file of her case (which she requested from the Department), led Mrs White to believe that the Department had mistaken the third location for some other location and that her sheep there had therefore been slaughtered in error. She felt that maps which she was subsequently sent by the Department had been doctored to show the third location as being within the cull zone. She pointed out her two fields there, both of which were within the line on the maps given to her by the Department. As the Department's file seemed to indicate that a so-called GIS map was marked with the *accurate* 3km circumference, she requested this on many occasions. The Head Office eventually sent one but, as it comprised several sheets which had not been joined accurately together, it was illegible.

123. At about 1.00pm on the 14<sup>th</sup> – after the sheep had been slaughtered – TVI A arrived with the Form A for the third location. As with the other Form A, it falsely claimed the premises to be infected, and no Department inspection or blood testing had been conducted. TVI A said the Department valuer had asked him to pass on his apologies for his valuation: he was unfamiliar with the breeds concerned but had done his best.

124. On valuation and compensation matters, Mrs White told my Officer that the Department valuer, whilst being an experienced sheep auctioneer, had undervalued her sheep because of his ignorance of her

breeds. His apology, via TVI A, confirmed this. She had rejected the Department's offer of a second valuation simply because it was not possible to value something which, being dead, no longer existed – and because valuations depended on matters which were individual to each sheep, such as prizes won. The Department's description of a second valuation was not a valuation at all. That is, they had said they would compare the original valuer's figure with an average figure, then arrive at a third figure, which would comprise the new valuation. The Department had paid the original valuation into the Whites' bank account without notifying them. Mrs White had been unhappy about this because it was not for the correct amount, which she herself had notified to the Department. She had heard nothing further about arbitration.

### **The Department's evidence**

125. At the start of the investigation the Head of the Department explained that the EI set out the *DEFRA* policy for dealing with cases where an owner resisted the cull but that in Scotland the policy responsibility lay with the Department and Scottish Ministers, not *DEFRA*. The Scottish cull policy was clearly outlined in the Ministerial statement of 15 March. In order to avoid any confusion with the *DEFRA* EI, Officer F had written to DVMs on 11 April confirming that the instructions in the information note of 3 April set the policy for the Scottish Borders as well as for Dumfries and Galloway. (Note: the information note stated that as sheep were a major source of infection and FMD in them was difficult to spot, all sheep within 3km of an infected farm in Dumfries and Galloway would be culled.)

126. The Head of the Department said that where it was not possible to reach an agreement with the owner about a valuer, the Department was able to appoint a valuer without agreement provided that he or she was independent of the Department and Scottish Ministers. As the Department was unable to enter discussions with the Whites, it was impossible to reach agreement and so the Department decided on the

valuer. Mrs White was notified of this and of her right of appeal. She did appeal and, rather than proceed immediately to arbitration, the Department offered her the chance of a second valuation from another independent valuer. The Head of the Department said this would give Mrs White the advantage of getting a second opinion without the risk of incurring costs from an arbitration. Any such second opinion would not have prejudiced her right to seek arbitration. All this had been explained to Mrs White, as had the procedures which the valuer would take to determine the value of sheep which no longer existed. As Mrs White had rejected the second-valuation option, the Department would proceed to arbitration to determine her compensation. However, the Department were waiting to see what other disputed compensation cases might arise so they could all proceed to arbitration together.

### **Evidence from the Department's Head Office**

127. My Officer interviewed Officer **G**, who explained that he was the Deputy Head of the Veterinary Team (i.e. SVS) on the animal health side of the Department. He reported to the ACVO, who was accountable to Scottish Ministers, unlike the CVO, who was part of DEFRA and was accountable to Westminster (see paragraph 14).

128. Officer G also discussed the use of Forms A and D. A Form D would issue first – to restrict animal movement and impose various arrangements. Where there were reasonable grounds for supposing FMD to exist, a Form A would then issue. Officer G explained that in Mrs White's case, the "reasonable grounds" were covered by the Minister's decision to introduce a 3km cull policy. A Form A declared the premises in question to be an infected place and imposed restrictions.

129. The next step would be the slaughter of animals at the infected place. In cases such as Mrs White's this meant the culling of all sheep in a 3km cull zone. Unlike slaughter resulting from other diseases, no

slaughter notice would be issued to alert owners that this was to happen.

130. Officer G explained why no Form D was issued for the third location. Officials did not know that Mrs White had sheep there when they issued the Forms D for the first two locations. The farmer (the owner of the third location) told officials about these sheep on 13 April and it was discussed at the next strategy meeting. Because the Minister wanted culling completed as fast as possible, the sheep, once discovered, had to be slaughtered promptly. As Form D was simply to restrict movement there would have been no point in issuing such a notice at the third location when officials were already about to slaughter the animals.

131. Officer G also explained that the Department would normally consider it good practice to give a written reply to a written appeal. In the case of Mrs White's appeal against the Form D, regrettably there simply was not time because of the enormous volume of work generated by FMD and its aftermath.

132. My Officer and Officer G discussed the EI in detail as it was not clear whether it had been in force in Scotland. On the one hand, the Head of the Department's written response (paragraph 125) indicated that the EI set out DEFRA's policy and that in Scotland, policy was determined by Scottish Ministers and the Department, not DEFRA; the F Papers had been issued to avoid confusion with the EI. This implied that the EI did not apply in Scotland. On the other hand, there were indications that it did apply. For example, Mrs White's copy of the EI (from RCVS via DEFRA) was headed with the Department's name. Also the EI clearly related to actions in Scotland (albeit not in Mrs White's area). A further indication appeared in the DEFRA letter of 10 August 2001 to RCVS. This letter was in response to Mrs White's complaint to RCVS and therefore related solely to Mrs White's case. It said that the EI was an instruction which had been issued to DVMs in

that part of Scotland covered by the EI and copied to other DVMs (such as the Galashiels DVM). It indicated that this instruction supplemented the instructions in the F papers and that instructions to staff were mandatory.

133. Officer G explained his own understanding of the EI. He did not consider that it had applied in Scotland. It issued from DEFRA in London. All notes of that type were automatically printed with both DEFRA and Department headers. He was not clear about why DEFRA were issuing instructions in relation to Scotland, which had its own policies. He felt it possible that the speed of events during this outbreak may have meant that DEFRA had not always been able to consult adequately about matters such as this before issuing instructions.

134. Regarding the apparent lack of relevant written procedures, Officer G suspected that, again, the speed of events meant it had not been possible to deal with a constantly-changing situation by written instructions. In any case, no procedures would have been written in relation to objections, appeals, exemptions, serology, geographical assessment or any of the other provisions in the EI or the F Papers. This was because the Minister's clearly-stated policy of 15 March was to cull all 3km sheep as quickly as possible, "cracking down hard". This policy did not allow for such provisions. Officer G also provided a note of a 16 March 2001 strategy meeting. This showed that pedigree sheep would not be exempted and that farms which were on the borderline of a 3km zone or in an isolated island surrounded by premises where animals were to be culled would be included in the cull.

135. As has been noted above, Mrs White felt that sheep of such genetic merit and rarity as hers should have been exempt – or at least considered for exemption. This belief was encouraged by the EI and F Papers she had received from RCVS and by the Head of the

Department's letter of 17 August 2001. This letter said that at the time her own sheep had been culled there had been some exemptions but that her sheep had not been exempted because they were not on the Rare Breeds Survival Trust list. As, in fact, at least some *were* on the list, this seemed to Mrs White further evidence that her sheep had been culled in contravention of procedures.

136. In relation to these issues Officer G said that the Rare Breeds Survival Trust's list divided various rare breeds into four categories of descending importance from 1 (critical) to 4 (at risk). None of Mrs White's sheep was categorised higher than 4. If an owner had objected before slaughter on the grounds of genetic merit or rarity, Officer G would have expected the DVM to have approached Head Office for advice. He was clear that the onus was entirely on the owner to raise the matter, not the Department. However, at the time in question, the outcome would have been the same: no exemptions were being made in Scotland. Over the few days following Mrs White's sheep cull, the Department started to evolve a policy which would allow some exemptions where circumstances were exceptional, where there was a clear case for it and where strong bio security measures were already in place. The case described in the Head of the Department's letter was the first exemption in Scotland and was granted on 20 April as part of this evolving policy. The circumstances were different to Mrs White's. Firstly, some of the animals were in Category 1, and the others were of scientific interest. Secondly, very stringent measures had already been in place on the farm for two months, for example housing the stock, implementing extensive disinfectant procedures and rigorously limiting the movement of people and goods. Thirdly, the owner herself had submitted an objection on the grounds of rarity. Even so, the exemption was subject to a satisfactory inspection of the bio security arrangements and negative blood testing. So, even if exemptions had been allowed earlier, Mrs White's circumstances could not have merited exemption.

137. Finally, Officer G referred to the GIS map which had been sent to Mrs White. He explained that the Geographical Information System produced many maps used by the Department: there was no single GIS map. Mrs White had wanted a GIS map on which the computerised system had drawn the 3km cull zone. Head Office had provided this but because of its size, the photocopy comprised many A4-size sheets, which might have caused some illegibility at the edges.

### **Evidence from the Department's local office**

138. **The DVM** and **the PAO** from the Galashiels office were interviewed. They discussed procedures and the relevance of the EI and the F Papers to Mrs White's case. Their office was accustomed to receiving instructions about Britain-wide matters from DEFRA, who retained a role in Scottish animal health field operations work. However, events were changing so fast in the FMD outbreak that the office was receiving conflicting instructions from DEFRA and from its own Head Office. Head Office therefore decided that if the office received any further instructions from DEFRA they should check their applicability with Head Office. Essentially, there were four main documents in existence in March/April 2001:

- (i) the Minister's statement of 15 March to the Scottish Parliament stating that all sheep in 3km zones would be culled;
- (ii) the EI. However, the local office had been told that this was not to be applied in Scotland. Thus, it did not apply in Mrs White's case;
- (iii) the F Papers. However, all but one of these related to policy for premises which were contiguous, ie within 1km of a premises where infection had been confirmed. The only one which applied in Mrs White's case was the information note of 3 April which, with regard to sheep in 3km zones, said that they would all be culled;



(iv) the Minister's statement of 26 April to the Scottish Parliament announcing a slight relaxation in the cull policy, given the progress achieved through the rigorous cull. As this was after Mrs White's sheep were culled, it was not relevant in her case.

139. The DVM was very clear in his own mind (both now and at the time) **that** the over-riding instruction was the Minister's policy that *all* sheep in 3km cull zones were to be culled and this had to be done very promptly. The DVM had been put in charge of the cull operation in that area and so had responsibility for all local decision-making – in consultation with Head Office where appropriate and in liaison with the PAO, local Council, Police and Army etc. It was also very clear to him that at the time in question there were no exceptions. Because he had read in the press of Mrs White's rare breeds, he had sought, and received, oral confirmation from Head Office before that cull that the policy remained unchanged.

140. The DVM and the PAO discussed events surrounding the cull of 13 April at the first and second locations. Mrs White seemed to know that her sheep would not escape the cull because she had been quoted in the press as saying that, having appealed against the Form D, she had learnt that her sheep were to be culled within the next two days. Also, the two locations were virtually the last premises in that 3km zone to be culled, so Mrs White must have realised from what was happening all around her and from the local media that a strict cull was being carried out.

141. As agreed with Mrs White, two agricultural officers gave her the Form D at a phone box on 7 April. Mrs White later said that one of them had told her a vet would be in touch in a few days to inspect the sheep. The PAO told my Officer that he would definitely not have expected officers who were serving Forms D to say this because they would not have known what the next steps were to be.

142. The appeal against the Form D was discussed at the 10 April strategy meeting. The DVM said that even if the EI (which allowed certain exemptions) *had* been in force in Scotland, Mrs White's appeal would not have been allowed because she appealed on the grounds that her animals had not been exposed to infection, that they had had no contact with diseased animals and that her premises were not contiguous with any infected ones. The EI did not provide for exemption on those grounds. It was decided at the meeting that the PAO would talk to Mrs White about the appeal and the cull policy. This was because the Department found that oral discussion with resistant owners tended to lead to their co-operation.

143. As detailed in the chronology (11 and 12 April), the Whites declined to discuss matters with the PAO or answer phone messages. It was decided at the strategy meeting of 12 April that the PAO would make one further attempt by visiting the Whites' home with the Police. The disease risk would permit no further delay. Next morning, therefore, he, an agricultural Officer and two police officers arrived at the house. As they had seen Mrs White go into the house they tried to get her to come to the door. The PAO and his colleague then left, after putting a Form A through the letterbox. The police officers were to remain until the cull was over in case of trouble and to keep the PAO informed of any events at the house.

144. The DVM and PAO also discussed events surrounding the cull of 14 April at the third location. No Form D was issued because they did not know that Mrs White had sheep there. The IACS records (see paragraph 36) showed land at the first and third locations as one unit, belonging to the farmer. One Form D for that whole area was therefore served on him. Mrs White did not appear on the subsidy records as an occupier of land at the first or third locations because she only arranged seasonal grazing there. There was also confusion when referring to the first location, because in doing so, people

(including Departmental staff) sometimes meant that location only, and sometimes meant both it and the third location. However, the fact that Mrs White had sheep at the third location came to light because the farmer mentioned this to the Department. Officials sent the valuer to value these animals. He was accompanied by TVI A. By the time that TVI A phoned the local office to tell them that the valuation was complete, the slaughter team were on their way to the third location. No slaughter time was noted on the records because this was not required for 3km culls but the DVM and PAO thought it had probably been done late morning. The DVM said that clearly Form A should have been delivered before the slaughter. But in fact TVI A delivered it in the afternoon. The DVM said that logistically, delivery of Form A before slaughter was not always possible during the outbreak. For example, it was not uncommon for officials to travel to particular fields to cull sheep there and find, on the way, sheep which were not on their lists. Hence, the Department had to take those sheep and sort out matters such as notices and ownership later. Simply leaving the sheep until that had been done would have been too big a risk. The DVM said the nature of the outbreak had caused many difficult situations of this sort, requiring quick, pragmatic, decisions.

145. The DVM and PAO discussed whether the third location was within the 3km zone because Mrs White had maintained that most or all of it had been outside and that those sheep should therefore have been spared. The DVM explained that part of the holding was outside the 3km line, which would usually be treated on the basis of "part in, all in". There were exceptions, and the DVM would take the final decision on these. He gave some typical examples of decisions where part of the holding was outside the line:

- (i) if sheep were physically present on both sides of the line, cull all sheep on the holding;
- (ii) if virtually all of the holding was inside the line, cull all sheep on the holding;

- (iii) if virtually all of the holding was outside the line but some sheep were inside the line, cull all sheep on the holding;
- (iv) if virtually all of the holding was outside the line – *and* animals were only physically present outside the line – do not cull any sheep on the holding.

146. The Department would phone an owner in advance to ask about valuation arrangements, additional facilities required for slaughter etc. Either at that discussion or when Form D was served, it would become apparent that there might be an issue about whether or not a holding was to be regarded as being inside or outside the line. The DVM said this happened surprisingly rarely but that they considered cases individually when it did. Mrs White's case was clear-cut in that all her sheep were physically inside the 3km line and so all had to be culled.

147. As Mrs White believed the 3km line to have been doctored to show the third location as being within the circle, the DVM and PAO discussed how premises in a 3km zone were identified. The DVM, PAO or a delegated official would decide which part of the IP to use as the centre point, following the instructions in one of the FMD emergency instructions. The centre point would be the main building, unless the animals were located over 1km away from there, in which case that location would be used. Common sense was also required. For example, one site had comprised a narrow, 7km long, strip, and the most sensible approach had been to have two centre points and thus two 3km cull zones. The grid reference for the centre point would be sent to Head Office, who would produce a map on computer, showing the 3km circle and the holdings inside and straddling the 3km line. These maps would then be sent to the local office for use by the cull teams. In Mrs White's case the IP was the farm on which FMD had been confirmed on 6 April and the steading of that farm was used as the centre point.

148. The DVM and PAO also discussed valuation and compensation

issues. Broadly, the procedure was that officials would pick a valuer from a list provided by the Institute of Auctioneers and Appraisers and offer that to the owner as the valuer for the sheep which were to be slaughtered. A degree of flexibility was possible to cater for owners' preferences. The PAO said that, had he been able to speak to Mrs White, he would have raised the question of a valuer. However, that had not been possible and so officials had simply chosen a valuer. Having been told by the PAO that Mrs White owned rare breeds, the valuer said he would speak to colleagues country-wide and to the breeds societies. The Department's local office had worked with the valuer before and considered him a man of integrity who prepared very thoroughly in order to do fair valuations. The PAO said that, after the valuation of Mrs White's sheep, the valuer had spoken to the Rare Breeds Survival Trust about it, who had confirmed that it was very fair.

### **Findings**

149. I set out my findings in relation to Mrs White's complaint in Section Six (paragraphs 181-191).

## **Section Six**

### **Comments and findings**

#### **General comments and findings**

150. I start this section by recapping on some of the general information about the FMD outbreak which I set out in Section One. This provides the context within which the complaints must be considered. FMD - an unpleasant and highly infectious animal disease - was confirmed in Scotland on 1 March 2001. The Minister put in place a policy of pre-emptively culling susceptible animals within 3km of IPs (paragraphs 3 and 4). To achieve its aim of bringing FMD under control the policy had to be implemented comprehensively and quickly. The cullings which gave rise to the complaints I have considered took place on 26 March and 5, 13 and 14 April. At that time it was not yet clear whether FMD was being brought under control. However, by 26 April the Minister was able to announce some relaxation because of the progress which had been achieved through the rigorous cull. The last outbreak of FMD in Scotland was confirmed just over a month later on 30 May.

151. The Anderson report (see paragraph 6 above), in comparing the response to FMD in England and Scotland, said: "In Scotland, with a different management structure and closer relationships between central government, local government and the farming industry, the outbreak was better managed. Contingency planning had been more systematic and the disease did not spread so far. Key problems were identified early and dealt with quickly." The report also said that local delegated responsibilities in Scotland were sensible and worked well during the outbreak.

152. Against that background, I have no doubt that Departmental officials had to *consider* all of the cullings which have given rise to the complaints I have investigated. And as I have already indicated in

paragraph 24, having carefully investigated the circumstances of each case, I have concluded that there are no grounds for me to question the decisions to *carry out* the culls. I explain below, in my comments and findings on individual complaints, why I have reached that view.

153. There are three general points on which I wish to comment before I move on to the individual cases. The first concerns the forms issued under the Order (see paragraph 9 above). The second point, which is related to the first, concerns the information which was available to the complainants both before and after their animals were culled. The third point, which leads on from the second, concerns the Department's response to correspondence from the complainants.

154. The manual for SVS staff (see paragraph 19 above) says that a Form A should be issued when premises were confirmed to be within 3km of an IP. No Form A was issued to either Ms Grey or Mrs Green. Both thought that they had to get some sort of documentation before culling could go ahead. Ms Grey seems to have thought that Form A would have provided an explanation for the decision to cull her sheep and/or act as a receipt. Mrs Green believed that she had to receive written notice before the cull could take place. In fact, none of the forms issued under the Order serves these functions or provides an explicit notice that slaughter is to take place. A Form A *was* served in respect of some of Mrs White's sheep. But she questioned its legality as it referred to her sheep being on an IP. Article 5 of the Order requires a Form A to be served on a place where there are reasonable grounds for supposing that disease exists or has existed within 56 days. It seems to me understandable that an owner might question, as Mrs White did, the applicability of Form A to a cull proposed under the 3km policy. As I have noted in the footnote to paragraph 9, the Anderson Report commented that some of the routine disease notices were poorly worded and recommended that Forms A-E be revised. The Head of the Department has told me that in the light of that recommendation his staff have reviewed with their

SVS and DEFRA colleagues the wording of the forms and the instructions on their use. I welcome that.

155. The confusion in relation to Forms A was part of a wider picture in which the complainants felt they lacked information about what was being planned for their animals and why. Individual officials made commendable attempts to provide oral explanations but in the charged atmosphere which existed at the time it is perhaps not surprising that these were neither well received nor properly understood. It seems to me that it would have been helpful if more written information had been available, particularly in cases such as these where owners had misapprehensions about and objections to the policies being pursued. I understand that a new protocol for slaughter policy has been adopted by DEFRA/SVS which applies across the UK and includes provision for a written slaughter notice to be given to owners in advance, stating the powers under which the slaughter is proposed, and the reasons why particular animals are included. This is to be welcomed. Although it would clearly not prevent the distress that an owner might naturally feel, it would reduce the scope for misunderstandings of the sort I have identified in these investigations.

156. It was against the background of the confusion I have described in the previous two paragraphs that the complainants pursued correspondence with the Department after their animals had been culled. I have examined the Department's handling of correspondence from Ms Grey and from Mrs Green and her daughter. In Ms Grey's case, a letter she wrote contained both a request for subject access under the Data Protection Act and questions which required a substantive response. The request was acted on but the questions were not. They were overlooked until my predecessor's Office approached the Department. Taken in isolation, that might be regarded as an unfortunate slip-up and one which could be understood in the context of the pressures which dealing with FMD placed on Departmental staff. However, my investigation of the handling of



correspondence from Mrs Green and her daughter has revealed more worrying problems, including a complete breakdown in the system for responding to letters sent to Ministers. I do not consider that even against the background of a crisis such as the FMD outbreak a breakdown of this nature can be regarded as acceptable. I raised my concerns with the Head of the Department who reiterated his acknowledgement (paragraph 95) that this was totally unacceptable albeit that it was due to organisational and administration problems rather than any attempt to conceal the truth. He said that steps have now been taken to address these weaknesses. I am satisfied that the problems were organisational and administrative in nature and I am pleased to note that lessons have been learned.

### **Comments and findings on individual complaints**

#### **Ms Grey's complaint**

157. Ms Grey considered that the Department failed to follow correct procedures when her sheep was culled. She felt "the Authorities were wrong to arrive, take my property (pet) provide no written reason for this, leave no written record with me that they had taken my property. This is what I believe to be maladministration." She was also concerned that she had not been served with a Form A at any time. From Ms Grey's letters, it appears that she believed that Form A would have provided an explanation or receipt.

158. I see no reason to question the Department's decision that, given the 3km policy, it was necessary to cull Ms Grey's sheep or the view that the power to do so existed under the Act and was not dependent on the serving of a Form A. However, it is clear that if the procedures set out in the SVS manual (paragraph 19) had been followed Form A would have been served on Ms Grey. As I have noted above, it seems that Ms Grey believes that Form A would have provided an explanation for the Department's actions or a receipt for her sheep. I have seen Form A and the Form B that Ms Grey actually received. Neither provides an explanation as to why an animal is to be

culled or acts as a receipt.

159. The failure to serve a Form A, and Ms Grey's misapprehension that if such a form had been served it would have explained why it had been decided her sheep should be culled, form the basis of her letter of 26 April in which, among other things, she asked what legality there was for culling her sheep. The Department have said that they thought the points raised by Ms Grey had been answered in a telephone conversation. However, it is clear from Ms Grey's correspondence that she does not feel her concerns have been addressed. The Department have acknowledged that the failure to provide a written response to Ms Grey was an oversight and have apologised for that. I consider that the failure to serve a Form A, linked to the failure to provide a written response to Ms Grey's letter of 26 April added unnecessarily to the distress she felt at the culling of her pet sheep. On that basis, and to that limited extent, **I uphold her complaints.** I hope this report provides the explanations Ms Grey was seeking for the basis of the decision to cull her pet sheep and I consider the apologies from the Department which I have noted in paragraph 38 constitute an appropriate response to her complaint.

### **Mrs Green's complaints**

#### **Complaint 1 – events surrounding the cull of the family's goat**

##### **Decision to cull**

160. The policy of Scottish Ministers was that the culling of animals in infected areas should be undertaken with the minimum of delay. The aim was to cull animals on IPs within 24 hours of confirmation of the existence of FMD there, and those on premises adjoining or within 3km of an IP within 48 hours. The reasons for this have been well explored in the interviews my Officer conducted with Departmental officials.

161. Mrs Green asked why her family's goat was not culled on 22 March when the neighbouring farm was culled out. This is a reasonable question, to which I have tried to find an answer. It was

suggested at interview that the Department did not know of the goat's existence because she was not registered with them, and/or because the farmer did not tell the Department about the goat when his farm was culled out. The latter suggestion seems to be contradicted by the Department's preliminary report of the action taken on the farm. This notes the existence of a goat at the cottage, but as the report is undated it is not possible to establish when it was written. The police evidence shows that ultimately an anonymous telephone call made on 27 March alerted the authorities to the fact that a goat was at the cottage, and action was then put in place to enact the cull. Mrs Green did not appear to be aware of the requirement to register the goat, but that is not a matter for which the Department can be held responsible. Although, therefore, the most likely explanation for the delay in culling the goat is that on 22 March 2001 the Department did not know of her existence, I have been unable to find the precise reason for this.

162. There was clearly some uncertainty within the Department over the specific provision under which the Green family's goat was culled. For example, the TVI considered that she was on land that was part of an IP, Officer C suggested that she was a dangerous contact and the initial response to the complaint from the Head of the Department suggested that she was taken under the 3km cull as well as being in close proximity to an IP. It is certainly possible to question whether or not she *was* in fact on an IP. The land on which the goat lived was completely surrounded by an IP, but no notice was served directly on Mrs Green to designate the cottage and its land as such. Other officials have pointed out, however, that the goat fell into more than one of the other categories that would indicate that culling was necessary under Ministerial policy. The Green family's goat lived in such close proximity to infected animals that she could clearly be considered a dangerous contact through potential exposure to infection. Equally, because her home adjoined the IP, she could have been taken under either the contiguous cull or the 3 km cull. It is understandable that Mrs Green and her family wanted to know the

specific reason for the decision to cull their goat, but it seems that any of these could be argued to be equally valid. Although, therefore, the *provision* under which the cull took place might be in question, there seems to be little doubt about *why* the goat was culled. It is clear that the Minister, or those acting on his behalf, decided to cull the goat as part of the effort to prevent the spread of FMD. Although it was not helpful that the reason was not properly identified to Mrs Green at the time, this did not affect the authority of the Minister to implement the cull if he, or those empowered to act for him, deemed it necessary.

163. Regardless, then, of why the Department decided that the goat had to be culled, was this decision properly taken? The Department had discovered that a susceptible animal remained alive on premises adjacent to an IP on which FMD had been confirmed and all other susceptible animals culled. They followed their normal policy, and notified the owner that the animal was to be culled. Mrs Green was told of this decision on 2 April. After three days, during which Departmental staff tried to persuade the family to agree to the cull, the TVI was sent to the cottage on the evening of 5 April with the express instruction that the cull was to be enacted that night. I explain below that there was no requirement for papers to be served *before* the cull could take place. It is not disputed that officials spent a considerable amount of time trying to convince Mrs Green of the need for the cull. While, therefore, I have every sympathy for Mrs Green and her family in losing their dearly loved pet in such a way, I am persuaded that in the circumstances the decision was properly taken. **I do not uphold this element of the complaint.**

#### **Notice of cull and serving of forms**

164. Mrs Green said that she expected to receive official written notification that her family's goat had to be culled, which she had to agree by signing, and she also believed that she should have been given 24 hours notice of when the cull was to take place. In evidence, Officer B said that the Department normally tried to ring the owner

24 hours before the cull took place, although he also said that this was not always possible. It may be that the following of this practice in the local area led to Mrs Green's understanding that there should be a period of notice. There is, however, no requirement in either the Act or the Order for the Department to give any specific notice before culling animals. Mrs Green was first told on 2 April that her family's goat was to be culled, although not exactly when this would happen. The goat was culled on 5 April.

165. I have ascertained that in relation to FMD culls there was no document designed to give notice of the Department's intention to slaughter animals. Officer B gave evidence that in most cases compensation was assessed and agreed before slaughter, especially where groups of animals were involved. He suggested that this might be why Mrs Green thought that she would have to sign and agree to the cull. No valuation was, however, made for the Green family's goat as this was considered to be insensitive because of the way in which events happened that night and because the TVI had considered that in the circumstances it would not be helpful.

166. More specifically, Mrs Green complained that Forms A and D were not served on her. On 21 March Form A was served on the farm, where FMD was later confirmed. As I have already explained (paragraph 9) Form A gives notice that the premises are declared infected for the purposes of the Order, and an attached set of rules explains the restrictions on the movement of people and animals on and off an IP. No Form A was specifically served on Mrs Green, although there is a question over whether or not this was necessary given the location of her home. Form D might in fact have been more appropriate in the circumstances, as it is normally served on premises at high risk of FMD infection, for example because of proximity to an IP. The Department have argued that they believed that the Form A served on the farm also covered the cottage as the fields of the farm surrounded it on all sides. They therefore saw no need to issue other

forms. Was it reasonable for them to so decide? They quite clearly believed that the cottage was physically part of the farm. Events at the time were moving very quickly, and given the location of the premises, which are not listed separately in the Department's records, it would indeed seem reasonable for them to assume that it was part of the IP. Although it is easy in hindsight to suggest that they might have checked further, I do not find that this was in itself maladministrative.

167. Furthermore, it is clear that neither form enables nor orders slaughter. Serving these forms on Mrs Green would therefore have made no difference to the matters complained about, although it might at least have alerted her to the fact that the situation was less retrievable than she believed. The Department were quite certain that the decision to cull the family's goat had been taken and that the cull should take place immediately. Mrs Green hoped and believed that the cull was not imminent, as she had not signed any papers. She was however clearly mistaken in thinking that she would have to receive or sign written confirmation before the goat could be culled. It seems to me that under normal circumstances this might be an understandable expectation from a member of the public dealing with a Government Department, as such Departments do tend to handle matters in writing and serve notices. Whether or not it was reasonable in the prevailing circumstances is, however, another matter entirely. Huge numbers of animals on farms all around had been culled over the preceding fortnight and at interview several witnesses described how bleak the picture was in the area at the time, with few animals left alive. After it had been explained to her by two vets and the Police that a TVI could cull the goat through the powers of the Act, it should have been clear to Mrs Green that her belief was mistaken. There was clearly no requirement on the Department to provide anything in writing. **I do not uphold this element of the complaint.**

### **Police presence**

168. Mrs Green was concerned because police officers attended on the evening in question. It is not, of course, for me to comment on the actions of the Police, which are outwith my jurisdiction. I can, however, consider the Department's decision to ask them to attend with the TVI. The evidence of Officer A shows that the handling of resistance to the cull was considered at a senior level within the organisation. The policy decision to use police officers to accompany officials and enforce the law where necessary was properly taken, and is therefore not open to question by me. Evidence from police officers and from Departmental officials shows that at the local level it was perfectly normal for the Department to request that police officers attend if officials believed that resistance to the cull might be encountered. In this case police officers attended to ensure that the TVI could carry out his duties under the Act – which gave him wide-ranging powers to inspect and enter premises. I have no reason to question the Department's decision to ask police officers to attend on the evening of 5 April 2001. **I do not uphold this element of the complaint.**

### **Actions of the TAO**

169. I have found no evidence to support the very serious allegation that the TAO assaulted and abused Ms Gold. As the accounts of events differ considerably it has not been possible to ascertain exactly what happened, in the absence of some independent evidence of what was said and done. The TVI and the TAO in fact said that they were not trying to prevent Ms Gold from reaching the cottage, but were trying to ensure that she disinfected herself. Mrs Green made the point that the disinfecting point where they were standing was not in fact maintained at that time, as the working point had been moved beyond the cottage, further up the road towards the farm. I do not consider, however, that in the circumstances it was unreasonable for these officials to ask Ms Gold to take disinfectant precautions. Ms Gold could not in fact describe exactly what happened, which is of course

understandable given the traumatic events of the evening. Even taking this into account, however, there is nothing to suggest that the TAO's actions were in the order of an assault. **I do not uphold this element of the complaint.**

### **Actions of the TVI**

170. I turn now to the specific actions of the TVI. The evidence that I obtained shows that on the evening of 5 April 2001 he was in an unenviable position. He had been sent to a place where resistance to the cull was expected, but with instructions to carry out the cull that night as long as his safety was not compromised. The TVI said in evidence that he was in no doubt that the cull needed to happen that night in accordance with the policy decision to cull animals to halt the progress of the disease. He was acting on behalf of the Minister, whom the Act says could "cause to be slaughtered any animal which ... has been exposed to the infection of any such disease". Clearly it was not part of the TVI's job to test the Green family's goat. The decision to cull had been taken, and it was in any case not policy to test animals that were to be culled within contiguous or 3km cull areas.

171. Mrs Green complained that the Department did not follow proper procedures when they culled the goat, and this includes the actions of the TVI. I have already said (paragraph 163) that it is clear that the decision to cull was properly taken under existing policy, even if Mrs Green did not believe that at the time. It is also clear that at that time no procedure existed that covered the events that unfolded at the cottage on the evening of 5 April. In the event, the TVI had to carry out his duties as instructed. It is unlikely that he could have asked the police officers to attend while he entered the shed without Mr and Mrs Green realising what he intended to do and insisting on being there too. The TVI said that he felt that the family's presence would have distressed the goat because of the way in which Mrs Green had already reacted. He said that he therefore decided that it was better to simply ensure that the goat was culled with the minimum of fuss



and distress to the animal.

172. The TVI confirmed that while the police officers were speaking to Mrs Green he took the opportunity to enter the goat's locked shed in order to carry out the cull. The fact that he did not ask the police officers to be present has understandably led Mrs Green to question the legality of his entry to the shed. It is not for me to make judgements on matters of legal interpretation, but I can consider whether or not the TVI's actions were reasonable in the circumstances. Mrs Green has said that she was particularly upset because she believed that he used the police officers to divert her attention. The TVI has agreed that this was essentially what he did, and I therefore have to consider whether or not this was reasonable. It might well have been desirable for him to have asked the police to attend when he entered, especially as he had to effect entry by damaging the door. In evidence, too, the Sergeant said that she would have taken advice had he asked her before doing so (paragraph 71). I also note, however, that Departmental officials interviewed believed that on balance the TVI did the right thing, and that the Police considered the matter but did not charge the TVI with any offence in relation to these events.

173. In coming to a view on the reasonableness of the TVI's actions, I have to take into account all these considerations, and I have done so in the light of the unusual times during which events occurred. The TVI had the power to enter premises through the provisions of the Act (paragraph 90). He also had authority to cull the animal (paragraph 8). He was dealing with a family who were not prepared to agree that their pet should be culled despite discussions and explanations over a three-day period. Mrs Green had in fact indicated that she was most unlikely to agree to the cull of an animal that she believed to be healthy. She, however, clearly had no chance of saving her family's pet, or even of postponing the cull, except by asking for a Judicial Review of the original decision (which she did not do). The TVI knew

that Ministerial policy deemed it essential that, once animals that fell within the cull criteria were identified, a speedy cull took place. He had been clearly instructed to carry out the cull that night and the unfolding situation seemed volatile. He decided to enter the premises, albeit by damaging the door, and put the goat to sleep with the minimum of fuss. I consider that in these complex circumstances the TVI's actions were reasonable in that he ensured that the goat was culled as quickly as possible that night. He also sought to carry out the culling in such a way that the animal herself did not suffer undue stress. **I do not uphold this aspect of the complaint.**

### **Complaint 2 – the Department's handling of Mrs Green's complaint and related correspondence**

174. There were several elements to this second aspect of Mrs Green's complaint to me. One is that she and Ms Gold made numerous telephone calls to the Department in order to get information, yet they received little response, and if they left their number they were rarely called back. As there is no record of these calls, however, I am unable to comment on this element of the complaint.

175. The handling of Mrs Green's letter of complaint itself was, however, clearly unsatisfactory. After she complained on 14 April, she received only an acknowledgement and a holding reply despite writing further letters. It was in fact 31 weeks before she received a reply. The Department's immediate response to her letter of complaint was one of concern, as the description she gave was of someone who had appeared to have been poorly treated. I would therefore expect the Department to have acted with some speed to resolve the matter and find out what had happened. It is clear from the Departmental files that the Group Head fully intended to send a complete and thorough reply. He clearly felt that the original draft response had not looked into the complaint closely enough, and so he asked colleagues for more information in order to reply (paragraph 103). While this was

being collated, he was taken ill, and it seems to be after this that the complaint was overlooked.

176. In considering this complaint, I have taken into account the fact that at the time the Department and CCU were receiving exceptionally high levels of correspondence. I have also taken into consideration the fact that the Group Head who first considered the letter was absent on sick leave for some time. However, he was clearly not handling the correspondence himself, as others were drafting the reply, and he had asked colleagues to obtain further details. The fact that he was absent would not therefore necessarily have affected the handling of the reply. It seems from the evidence that I have obtained that when first Officer A, then Officer E, passed on the letter on taking leave, no-one took proper responsibility for it (paragraph 104). I note that Officer E said that she would investigate immediately. In fact she did not. Although there is evidence that she took action to obtain some information, there is no evidence to show that she followed the matter through or that she passed it on properly when she went on leave. It was not until Officer D discovered other unanswered letters (paragraph 98) that the preparation of a reply was properly put under way.

177. It is also apparent that a system was put in place that was unsatisfactory and fallible, and which allowed hundreds of items of correspondence to be overlooked for a number of weeks (paragraph 98). These included reminders and other letters from Mrs Green and Ms Gold that would normally have prompted further action on the original complaint. From Mrs Green's point of view, therefore, she and her daughter were writing again and again, yet receiving no response. Mrs Green had to wait 31 weeks for a reply to her complaint. Even in the circumstances of the FMD outbreak, to take so long to reply to a complaint is unacceptable, particularly given the nature of the events described and the initial concern with which Departmental officials viewed its contents.

178. I do not find the complaint that the Department failed to investigate the matter justified. The Group Head clearly intended to do so, and once Officer D discovered the unanswered correspondence, he obtained a great deal of information in order to reply to the letters. The problem was one of a serious delay in answering Mrs Green's original complaint, which seems to have been caused by a lack of internal communication, and/or systems failures within the Department. **I find this element of the complaint justified and uphold the complaint to the extent described.** The Department have told me that this correspondence system has now been changed, so that when CCU become aware of unopened emails, they alert the AHW Branch line manager. I welcome this. I would, however, **recommend** that the Department also review their complaint handling process, as Mrs Green's original letter of complaint was lost in the system for a different reason. In particular, I **recommend** that any process used to hand over responsibility for a complaint is reviewed.

179. Mrs Green complained that when she wrote and phoned, the Department gave her no advice about what disinfectant precautions she should take after the goat was culled, or about what she should do with feedstuff and other items. It was certainly unacceptable that no-one seemed to respond to her questions about information on disinfecting. The delay in responding to her letters seems to have caused this, and the drafts of the complaint response that are within the Departmental file show that the question was never fully considered. The Department eventually explained to Ms Gold why normal preliminary disinfecting precautions were not taken after this particular cull (paragraph 107), and Officer B said that the risk of contamination after the cull was relatively low. Mrs Green, however, had been told that the goat had to be culled because there was a high risk that she might infect other animals. To the layperson, these two views appear incompatible, and clearly if a decision not to disinfect had been taken, Mrs Green should have been told of it and of the reasons

for it. I **recommend** that the Department now apologise to Mrs Green for this omission.

180. Finally, I note that the issue of compensation remains unresolved. I therefore **recommend** that when writing to Mrs Green, the Department offer to resume correspondence with her about compensation both for the value of her pet, and any other associated costs, such as any damage done when the TVI forced entry to the shed. It may be that Mrs Green does not wish to enter into such discussions, and if so that is of course her right, but I believe that the Department should at least offer to resolve this in order to finalise matters. I also **recommend** that SEERAD offer Mrs Green a consolatory payment to take into account the added distress that these delays caused after the loss of her family's goat.

### **Mrs White's complaint**

181. Mrs White's complaint has five main strands:

- i) that the Department failed to follow the procedures in the EI and the F papers;
- ii) that she received no reply to her appeal against Form D;
- iii) that the sheep at the first and second locations were culled without her permission by breaking into fields - and before she knew the result of the appeal or could choose a valuer;
- iv) that there were faults in relation to the third location - it was not within the cull zone; no Form D was issued; the sheep there were culled before the issue of Form A (denying her the chance to appeal or choose a valuer), and Form A falsely claimed the premises to be infected; and
- v) that because of the valuer's lack of knowledge, an inadequate valuation level was calculated. Full compensation had still not been paid.

### **Procedures in the EI and the F papers**

182. I have established that the Department decided – as was their right – not to follow the procedures in DEFRA's EI. They considered they could not carry out the Minister's clear policy of fast, firm action to overcome the disease if they allowed blood testing, exemptions etc as provided for in the EI. It is not for me to question this policy. I have also established that the F papers related solely to premises *next* to those where FMD had been confirmed, apart from an information sheet which said that 3km sheep would be culled. This information sheet was thus the only part of the EI or the F papers relevant to Mrs White's case.

183. DEFRA is not a body within my jurisdiction. Nevertheless, I wish to comment on their letter of 10 August 2001 to RCVS, because DEFRA had sent drafts of it to SVS in Scotland for comment. It gives a detailed and clear impression that the instructions in the EI and the F papers applied in Mrs White's case. After all, why describe and enclose a copy of them if they did not? When RCVS passed on this information to Mrs White she understandably, though wrongly, concluded that because reviews, testing and exemptions had not been considered in her case, her sheep had been slaughtered in breach of procedures. I consider that the letter unnecessarily prolonged Mr and Mrs White's difficulties in accepting the loss of their sheep. I am disappointed that SVS in Scotland did not appear to notice that the letter was premised on irrelevant instructions when considering the drafts.

184. However, as neither the EI nor the F papers contained relevant instructions beyond stating that there would be a 3km cull, **I do not uphold the complaint that procedures were not followed.**

### **Appeal against Form D**

185. Mrs White complained that she did not receive a reply to her appeal. Here, I feel, Mrs White herself contributed to the problem. She painted a harrowing picture of a frenetic and nightmarish time.

Even so, it was not sensible to decline and ignore approaches from officials. It was part of the PAO's job to explain the cull policy to owners with particular concerns and to oversee valuation arrangements. Indeed, I note that the Scottish Executive response to the Anderson Inquiry said that agricultural staff played a successful and substantial role in meeting individual farmers and dealing with their objections to the cull. Had Mrs White accepted the PAO's offer of a discussion, I consider that she would have: learnt the outcome of her appeal (with the reasons for the strict policy); had a chance to ask about exemptions; learnt that her sheep were to be slaughtered; and been able to choose a valuer. I accept Officer G's view that ideally the Department would reply in writing to appeals made in writing but that trying to cope with, and get ahead of, a fast-moving disease did not constitute ideal circumstances. **I do not uphold this aspect of the complaint.**

### **The first two locations**

186. I have established that officials had the power to enter premises and to slaughter without owners' permission. As indicated above, I consider that if Mrs White had responded to the PAO's attempts to communicate, she would have known that the sheep here had to be slaughtered and would have been able to choose a valuer. Accordingly, **I do not uphold this aspect of the complaint.** (I have been unable to reconcile the differing accounts of whether or not Mrs White was at home when the PAO served Form A. However, I have established that Form A does not have to be delivered into the affected person's hands. I therefore do not see any significance in Mrs White's whereabouts at the time.)

### **The third location**

187. The Department have said that they could not issue a Form D for the third location, as they did not know of the sheep there. They also said there was no point in issuing a notice to restrict animal movement there because, when they did find out about them, those animals were

to be slaughtered virtually immediately. These points seem reasonable.

188. However, I was very concerned that Form A did not appear to have been issued until the sheep were being culled. I have given careful thought to this – particularly given that, by the previous evening, Mrs White believed the cull to be over and the sheep at the third location to be safe. I have concluded that, given the circumstances of the outbreak, it would not be reasonable to criticise the Department for this. I also consider that, if Mrs White had taken up the PAO's invitation to discuss matters, the existence of the sheep at the third location would have arisen, in which case Mrs White would have been made aware of their likely fate.

189. Mrs White has complained strongly that Form A was served illegally because it falsely claimed the third location to be infected. Officials have discussed Form A at interview, and I have studied both it and the related instructions in the Order. As I have noted in paragraph 154, I think it is understandable that Mrs White questioned its applicability in her case.

190. Again in relation to the third location, Mrs White believed that those sheep should have been spared because the fields were outside the cull zone. I have noted that there are various interpretations about what would happen where a holding straddled the 3km line, and so I have given particular and very careful thought to this matter. Mrs White pointed out her two fields at the third location on a map at interview. The DVM and PAO have explained (paragraph 147) that the centre point for determining the 3km zone was the steading (that is, the farm house and any main adjoining buildings) of the place where infection was confirmed on 6 April. This ties in with the Department's procedures for establishing the centre point. I am satisfied that the 3km circumference marked on the maps given to Mrs White was accurate. I have also confirmed that a substantial part of the third



location came within that line. Those fields are surrounded on three sides by land within the cull zone. I can envisage no scenario in which it could have been considered safe to leave uncultivated an island of land in such a position. **I do not uphold this part of the complaint.**

### **Valuation and compensation**

191. I have seen no evidence of fault in the way that the valuer was chosen or in the way that he went about his valuation. **I do not uphold this part of the complaint.** Valuation levels are not for me to determine. However, I note that the Head of the Department has said that the Department had not proceeded to arbitration because they wished to see if there were similar cases which could be handled together. There is sense in this, but in view of the time which has now passed since the valuation, I **recommend** that the Department approach Mrs White to see whether she wants arbitration.

### **Conclusions**

192. I have set out my recommendations in paragraphs 178, 179, 180 and 191. The Head of Department has responded to these as follows -

- Paragraph 178 (review of complaints handling process): a review has been put in hand.
- Paragraph 179 (apology to Mrs Green): agreed.
- Paragraph 180 (discussion about compensation, and consolatory payment to Mrs Green): the Department have agreed to write to Mrs Green about the issue of compensation and associated costs and to offer her a consolatory payment.
- Paragraph 191 (writing to Mrs White about whether or not she wishes arbitration): agreed.

**GLOSSARY OF TERMS**

Act	- Animal Health Act 1981
AHW Branch	- the Department's Animal Health and Welfare Branch
Anderson inquiry } and report }	- Inquiry into the outbreak, chaired by Dr Iain Anderson, and his subsequent report
CCU	- Scottish Executive's Central Correspondence Unit
DEFRA	- Department for Environment, Food and Rural Affairs (formerly known as MAFF)
Department	- Scottish Executive Environment and Rural Affairs Department (previously known as Scottish Executive Rural Affairs Department)
EI	- Emergency Instruction
EU	- European Union
F papers	- Papers issued by Officer F on 10 and 11 April 2001
FMD	- Foot and Mouth Disease
Forms A-E	- FMD notices issued to owners
Head Office	- Department's Head Office in Edinburgh
IACS	- Department's Integrated Administration Control System
IP	- Infected Premises; premises where FMD was confirmed
Order	- Foot-and-Mouth Disease Order 1983
OSSE	- Office of the Solicitor to the Scottish Executive
RCVS	- Royal College of Veterinary Surgeons
SAGRIMO	- UK Sheep and Goats (Records, Identification and Movement) Order 1996
SEDPU	- Scottish Executive Data Protection Unit
SVS	- State Veterinary Service

**INDIVIDUALS MENTIONED IN REPORT**

ACVO	- Assistant Chief Veterinary Officer
CVO	- Chief Veterinary Officer
DVM	- SVS Divisional Veterinary Manager of a local office
The farmer	- local farmer who owned some of the land used by Mrs White
Mr B	- valuer of Mrs White's sheep
Officer A	- Regional Operations Director in Dumfries
Officer B	- temporary DVM
Officer C	- temporary DVM in Dumfries
Officer D	- Head Office official
Officer E	- Head Office official
Officer F	- senior Head Office official (also referred to as the Group Head)
Officer G	- senior SVS official in Scotland
PAO	- Principal Agricultural Officer in a local office
TAO	- Temporary Agricultural Officer
TVI	- Temporary Veterinary Inspector
TVI A	- Temporary Veterinary Inspector who dealt with Mrs White

ANNEX C

Forms Issued Under The Foot-and-Mouth Disease Order 1983

Form	Purpose	Legal requirement under the Order
<b>A</b>	Served by Animal Health Inspector to notify occupier that place has been declared an IP. Served as soon as FMD suspected in susceptible animals. Prohibits movement of people and animals/animal products; access to premises strictly controlled. Licence required for movement on/off premises. Imposes disinfectant precautions.	Article 5 requires Form A to be served on a place where there are reasonable grounds for supposing that disease exists or has within 56 days existed.  Article 9 describes the rules to which the premises and those on them are subject.
<b>B</b>	Withdraws Form A, after IP cleaned out and thoroughly disinfected.	Articles 5 (4) and 6 (5)
<b>C</b>	Certificate of Suspected Disease - served on an IP by a veterinary inspector who has reasonable grounds for supposing that an animal/carcass is affected with FMD. Prohibits movement of susceptible animals within 8km of place on which Form A served while diagnostic tests for FMD completed.	Article 7 (2) of Order requires inspector to sign Form C after they have decided that FMD is present. They must also tell the chief constable and local authority that Form C has been signed.
<b>D</b>	Served on premises that are at high risk of FMD infection because of animal movement or proximity to an IP. Movement restriction control form preventing animals and animal products being moved on and off the premises without a licence.	Article 13 of the Order enables an inspector to serve a Form D where there are reasonable grounds for suspecting that an animal has been exposed to infection. Where a 3km cull zone has been established, all relevant species of animal within are regarded as having been so exposed.
<b>E</b>	Withdraws Form D	Article 13 (5) (b) of Order