

Scottish Parliament Region: North East Scotland

Case 200502842: Scottish Government Environment Directorate

Summary of Investigation

Category

Scottish Government and Devolved Administration: Agriculture

Overview

The complainant (Mr C) raised a number of concerns on behalf of his wife (Mrs C) about the way the Scottish Executive Environment and Rural Affairs Department, now the Scottish Government¹ Environment Directorate (the Directorate), handled her application for the Single Farm Payment Scheme - National Reserve 2005 (SFPS – NR 2005) during the period February 2005 to March 2006.

Specific complaint and conclusion

The complaint which has been investigated is that the Directorate failed to handle properly Mrs C's application made under the SFPS - NR 2005 (*partially upheld*).

Redress and recommendations

The Ombudsman recommends that the Directorate:

- (i) reminds their staff of the importance of apologising for mistakes;
- (ii) apologises to Mrs C for the lost application;
- (iii) reminds staff of the importance of ensuring they provide consistent responses to all correspondence; and
- (iv) ensures its advice on agricultural scheme requirements is explicit in all its literature.

The Directorate have accepted the recommendations and will act on them accordingly.

¹ On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive.

Main Investigation Report

Introduction

1. On 2 May 2006, the Ombudsman received a complaint from the complainant (Mr C) about the way the Scottish Executive Environment and Rural Affairs Department, now the Scottish Government Environment Directorate (the Directorate), had handled his wife (Mrs C)'s application during the period February 2005 to March 2006. Mr C complained that on 17 February 2005 Mrs C had submitted all the relevant applications under the Single Farm Payment Scheme - National Reserve 2005 (SFPS - NR 2005) but that the Directorate had lost them. He said the Directorate had also failed to provide appropriate advice to Mrs C about her application and the application process. As a result, Mrs C could not apply for subsidy under the Single Farm Payment Scheme (SFPS) for the next five years. Mr C complained to the Directorate but remained dissatisfied with their response and subsequently complained to the Ombudsman.

2. The complaint from Mr C which I have investigated is that the Directorate failed to handle properly Mrs C's application made under the SFPS – NR 2005.

Investigation

3. In writing this report I have had access to all the documentation relevant to Mrs C's case held by the Directorate including her application and complaint correspondence with the Directorate. An explanation of the abbreviations used in this report is at Annex 1. I have reviewed the guidance and information available to farmers on the schemes relevant to this complaint (extracts are at Annex 2) and visited the local area office that handled Mrs C's application.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Directorate were given an opportunity to comment on the draft of this report.

Background

5. The SFPS is the principal agricultural subsidy scheme in the European Union. It was introduced in 2005 following EU agreement on the reform of the common agricultural policy. It was designed to decouple, or separate, support from production which meant that the subsidy farmers received would not be linked to the level of production. The National Reserve, unique to 2005, was introduced to address certain situations arising from this switch to a decoupled

subsidy scheme and help producers who were financially disadvantaged by the introduction of the SFPS. This included new entrants to farming, such as Mrs C, as it was based on farming activity carried out during the period 2000 to 2002. The National Reserve gave (or did not give) entitlement to the SFPS.

6. In Scotland, the SFPS – NR 2005 was administered by the Directorate. Any entitlements awarded under the National Reserve had to be activated by the Single Application Form (SAF). There is a separate SAF for each calendar year and the forms are dated on the front. Farmers had to comply with all the rules of the Integrated Administration and Control System and the relevant scheme to be eligible for subsidies when applying to the SFPS. The Directorate issued an explanatory booklet about how the Integrated Administration and Control System would work in 2005. The booklet said farmers had to submit a SAF by 15 May 2005 about the land they farm if they wanted to claim under the SFPS – NR 2005. Failure to do so meant that no subsidies would be paid for five years. The Directorate would issue an acknowledgement within ten days of receipt of the SAF. This was necessary to show the claim was received by the Directorate on or before the closing date in the event of any dispute.

7. Applications to the National Reserve for new entrants to farming had to be made between 31 January 2005 and 14 March 2005. The National Reserve Information Leaflet (Leaflet No. 11) issued on 28 January 2005 stated that the land claimed under the National Reserve must be declared in the farmer's 2004 SAF if submitted and/or included in their 2005 SAF. Farmers had to ensure the land declared in their application under the National Reserve matched all entitlements in their 2005 SAF or they would risk losing their allocation.

Complaint: The Directorate failed to handle properly Mrs C's application made under the SFPS – NR 2005

8. On 17 February 2005, Mr and Mrs C submitted in person an application under the SFPS – NR 2005 to the Directorate. They received a receipt and the application was logged on to the local area office's electronic mail book. The receipt is marked 'SFPS 2005, Application for Ref amount from NR'. This application was then mislaid by the Directorate.

9. Mr and Mrs C told me they telephoned regularly after the submission of the application (see paragraph 16). However, the Directorate does not keep records of such telephone contacts, and there is no record in the Directorate's

files of any further contact between Mr or Mrs C and the Directorate until 9 January 2006 when Mrs C contacted the Directorate to find out why she had not received any SFPS payments.

10. On 16 January 2006 the Directorate wrote to Mrs C accepting that they had received and mislaid an application from her for the National Reserve in February 2005 and offered her a chance to resubmit this application. However, they also said they had no record of receiving a SAF from Mrs C at that time. Furthermore, this would not have been possible as the 2005 SAF was not available until 15 March 2005. Finally, in the absence of a valid SAF any funds awarded from the National Reserve would be at risk. Mrs C resubmitted her National Reserve application on 23 January 2006.

11. On 24 January 2006 the Directorate received a complaint from Mrs C about the way they had handled her application to date. During February and March 2006 Mrs C received letters from various officials about her resubmitted application and about her complaint.

12. On 15 February 2006, the Directorate responded to Mrs C's complaint. They accepted the original application had been lost, but pointed out that the front page of the National Reserve application form clearly stated that an applicant should contact their area office if the application is not acknowledged within ten days. They also said that the SAF could not have been submitted on 17 February 2005 because it was not available until 1 March 2005. Furthermore, without a valid SAF the application for the SFPS – NR 2005 could not have been considered, and that this was clear in the information leaflet which accompanied the SFPS – NR 2005 application form.

13. On 17 February 2006, an official from the Directorate's Appeal Secretariat told Mrs C they would not accept an appeal because Mrs C had not entered the SFPS having failed to submit a SAF. The manager of the SFPS – NR 2005 believed that the National Reserve Information leaflet (Leaflet No. 11) clearly implied a requirement to complete a SAF.

14. There were three further letters from the Directorate to Mrs C on 24 January, 7 February, and 21 February 2006 each asking her to complete an annex to the application form to the SFPS – NR 2005. On 10 March 2006 another letter to Mrs C said that as the annex was not completed, the application was rejected.

15. Mr and Mrs C complained that they had submitted all the relevant applications, including the SAF, in February 2005. Mr C told me he remembered the form clearly because it was extremely comprehensive. It was also the foundation on which everything was built so he had realized how important it was. He had to go to his bank for corroborative evidence in support of the SAF. Mr C said it was possible the SAF they had submitted with their SFPS – NR 2005 application was an old one. He said the SAF and the application to the SFPS – NR 2005 (and evidence in support of the applications) had been together in one envelope and hand delivered to the Directorate. When Mr and Mrs C obtained a receipt from the Directorate, he said nobody had opened the envelope or itemised each item in the envelope on the receipt.

16. Mr C said they had telephoned the Directorate regularly after they submitted their applications, but were told staff would contact them if they needed anything. He remembered the period very well because it was when his son had an accident and became paraplegic. Mr C said the Directorate failed to take responsibility for the mistakes they made.

17. In response to our enquiries, the Directorate said initially they had refused Mrs C's application made under the SFPS – NR 2005 because she had not submitted the required SAF in 2005. They did not accept Mrs C's claim that she had submitted this form on 17 February 2005 because it was not available until 15 March 2005. The Directorate had held public meetings to explain both the SFPS and the SFPS – NR 2005, and information had been provided in the accompanying information leaflet (Leaflet No. 11) to the applications making it clear that a SAF had to be submitted.

18. The Directorate later told this office that Mrs C's application was rejected as a result of her failure to complete and return annex 1 of the SFPS – NR 2005 application. Even if the application had been successful, the absence of a 2005 SAF would have meant that there was no valid award from the National Reserve. The Directorate said the letter issued on 17 February 2006 (see paragraph 13) did not reflect this accurately and was issued before the correspondence relating to the completion of the National Reserve processing. Even if Mrs C's application under the SFPS – NR 2005 had not been mislaid and processed normally in 2005, the earliest she would have heard from the Directorate about the application would have been June 2005, past the deadline for submitting the SAF.

19. The Directorate said claims and applications received in the post and at the counter were recorded on office spreadsheets or on the mail book. They were acknowledged using the relevant IT system procedures or manually if no programme was in place. Counter submitted documentation was given a further manual receipt showing detail of the submission and the date of its receipt (revised procedures were implemented in July 2005). Having visited the office which received and subsequently lost Mrs C's SFPS - NR 2005 application, it is clear Mrs C's application was lost after it had been recorded on the electronic mail book but before a physical file was made up (the next step in the process). I am satisfied that all items were recorded separately on the mail book. There is no entry on the mail book recording the submission of any SAF by Mrs C at this time.

Conclusion

20. Mr C complained that the Directorate had failed to handle properly Mrs C's application made under the SFPS - NR 2005.

21. The Directorate mislaid the application handed in on 17 February 2005. When this was drawn to their attention the Directorate invited Mrs C to resubmit her application (although they also indicated this was unlikely to succeed). However, they should have apologised to her for this loss but they failed to do so. The Directorate have been unable to explain this loss; it is clear their procedures at the time were not sufficiently robust to enable staff to retain and process all submitted applications. They have since revised their procedures, which I welcome.

22. Mr C has told me that a SAF was submitted in the envelope on 17 February 2005. I do not accept it could have included a valid 2005 SAF because these were not available at that time. The literature provided by the Directorate makes clear that any SAF submitted must be for the relevant calendar year. Mr C has said he may have submitted an old SAF. While I accept Mr C fully intended to submit this form, on the balance of probability, I have determined that he did not. Had he done so, it would have been recorded on the mail book together with the SFPS - NR 2005 application that was submitted and there is no record of this.

23. I have noted that there was some confusion in the correspondence between the Directorate and Mrs C in early 2006. There was no connection between the continued responses to Mrs C's complaint, and the responses to

her resubmitted application to the SFPS - NR 2005. However, although this confusion was maladministration and should not have happened, the outcome was clear: Mrs C's application for the SFPS - NR 2005 was unsuccessful.

24. Mr C also complained that the Directorate mishandled Mrs C's application because they did not provide appropriate guidance. Applying for the SFPS - NR 2005 was not a simple process.

25. I have carefully read the literature provided by the Directorate with application forms for the SFPS - NR 2005. This does not say explicitly that applications for the SFPS - NR 2005 can only be considered if a valid 2005 SAF is also submitted. The leaflet does say in the section for new entrants to farming that 'The area of land claimed under the National Reserve must be no greater than the area declared in the 2005 [SAF]. This area must have been declared on your 2004 [SAF] if submitted and/or included on your 2005 [SAF]'. Given that this leaflet may have been the only source of information for a significant number of applicants who were new farmers and who had not submitted a 2004 SAF such as Mrs C, it was particularly important the information was clear and unambiguous. However, while the advice could and should have been clearer, I accept there was sufficient information to make the applicant aware that a SAF was relevant to the SFPS - NR 2005. More importantly, however, in terms of this complaint, Mr C was aware of the importance of this form.

26. Mr C has told me he was aware of the importance of the SAF as the foundation for all the subsidies. However, I have concluded above that a valid 2005 SAF was not submitted in February 2005. I have also concluded the Directorate did give sufficient information for applicants to understand that a valid 2005 SAF was relevant to the SFPS - NR 2005. In these circumstances it was Mrs C's responsibility to ensure that the correct forms were submitted by the appropriate closing dates. However, I have identified shortcomings by the Directorate in their handling of the application. Taking into account all the circumstances I, therefore, partially uphold the complaint that the Directorate mishandled Mrs C's application.

Recommendations

27. The Ombudsman recommends that the Directorate:

- (i) reminds their staff of the importance of apologising for mistakes;
- (ii) apologises to Mrs C for the lost application;

- (iii) reminds staff of the importance of ensuring they provide consistent responses to all correspondence; and
- (iv) ensures its advice on agricultural scheme requirements is explicit in all its literature.

28. The Directorate have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Directorate notify her when the recommendations have been implemented.

Explanation of abbreviations used

Mr C	The complainant
The Directorate	The Scottish Government Environment Directorate
Mrs C	Mr C's wife
SFPS – NR 2005	Single Farm Payment Scheme - National Reserve 2005
SFPS	Single Farm Payment Scheme
SAF	Single Application Form

List of legislation and policies considered

The Integrated Administration and Control System 2005 explanatory booklet stated:

'You are required to submit a SAF if you wish to claim under ... [SFPS – NR 2005].'

'You must submit the SAF for your main farm, together with all supporting documentation for the land you farm, so that it reaches your ... area office by **16 May 2005**.'

'Once your SAF has been recorded, you will receive an acknowledgement. This will normally be sent within 10 working days of receipt of your form ... In the event of a dispute about receipt of your SAF, you must be able to show that your claim was received on or before the closing date by producing an official acknowledgement. If you do not receive an acknowledgement, you should make enquiries at your ... area office in good time so that ... you can deliver another SAF before the closing date.'

The National Reserve Information Leaflet (Leaflet No. 11) issued on 28 January 2005 stated:

'The area of land claimed under the National Reserve must be no greater than the area declared in the 2005 [SAF]. This area must have been declared on your 2004 [SAF] (if submitted) and/or included on your 2005 [SAF].'

'If you have made an application under any of the categories to the National Reserve which may result in an award which will increase the amount of entitlements held by you. You should make sure that you the clear sufficient land to match all entitlements in your 2005 [SAF] or you risk losing your allocation back to the National Reserve.'

Notice displayed in Mr C's local area office stated:

'Ag staff are allowed to give producers **guidance** on completion of forms but producers should be told to seek the help of professional advisers if they require specific agricultural business advice.'