

# More Cold Comfort: how the Rural Payments Agency handled claims to the Single Payment Scheme in 2005 and 2006

# More Cold Comfort: how the Rural Payments Agency handled claims to the Single Payment Scheme in 2005 and 2006

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Session 2010-12

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## Foreword

I am laying this report before Parliament, under section 10(4) of the *Parliamentary Commissioner Act 1967*, to complete the story begun in December 2009 with *Cold Comfort: the Administration of the 2005 Single Payment Scheme by the Rural Payments Agency*. *Cold Comfort* looked at the problems suffered by some farmers when the Rural Payments Agency, part of the Department for Environment, Food and Rural Affairs, failed to pay them financial support when expected.

It is significant that the last time I reported to Parliament on the actions of the Rural Payments Agency in *Cold Comfort* I needed to use my powers in section 10(3) of the *Parliamentary Commissioner Act 1967*. This was because the Rural Payments Agency failed to accept all my findings and implement all my recommendations. In the case of *Cold Comfort*, only after the intervention of the Public Administration Select Committee did the Rural Payments Agency act to remedy the injustice set out in my report. Although *More Cold Comfort* tells a similar story of poor administration to *Cold Comfort*, the response of the Rural Payments Agency and the Department for Environment, Food and Rural Affairs has been a very different one to that which my Office experienced previously. My Office will no doubt continue to receive complaints about the Rural Payments Agency, some of which are likely to concern the administration of the Single Payment Scheme. In light of our experience with *More Cold Comfort*, I am hopeful that any future complaints will be resolved more quickly and simply than has been the case in the past.

*More Cold Comfort* looks at the problems suffered by nine farmers who, amid the confusion of a new system, made innocent mistakes in their claims for financial support. The farmers realised their mistakes only when their payments did not arrive at all, or fell far short of the amounts expected.

By then it was too late for the farmers either to correct their mistakes or to plan ahead for having thousands of pounds less money than expected. This money was European Union funding set up ‘with a view to ensuring a fair standard of living for the agricultural community’ (Recital 21 of Council Regulation (EC) No 1782/2003).

Our investigation looked at whether or not the problems suffered by the farmers resulted from the Rural Payments Agency’s mishandling. I have upheld all nine complaints, finding that each of the farmers had suffered an injustice because of maladministration by the Rural Payments Agency. In total I have made fifteen recommendations, fourteen of these relate to the individual complainants featured in the report. My fifteenth recommendation is intended to address some of the systemic issues identified in the report. I am pleased that, in contrast to their response to *Cold Comfort*, the Rural Payments Agency have accepted my recommendations in full.



Ann Abraham  
**Parliamentary and Health Service Ombudsman**

November 2011

# Summary

## Background

The Single Payment Scheme was a new form of European Union support for farmers that started in 2005. Currently worth about £1.8 billion to farmers in England, it was intended to be simpler and better than earlier subsidy schemes for farmers. The Rural Payments Agency are responsible for running the English scheme. A mix of problems, set out in several official reports since 2005, made implementing it much harder than expected.

The nine complaints investigated by the Ombudsman involved Single Payment Scheme claims for 2005 and 2006. The complainants all ran small businesses in England. They ranged from part-time farmers claiming just a couple of thousand pounds a year to a farm employing several people and eligible for over £20,000 a year in financial support. They complained that the Rural Payments Agency had mishandled their Single Payment Scheme claims and their later complaints. They said the Rural Payments Agency's mishandling had caused them financial loss, inconvenience, upset and expense. They wanted an apology, compensation, and an assurance about better handling of their Single Payment Scheme claims in future.

## The complaints

In particular, the complainants alleged that the Rural Payments Agency:

- failed to take decisions based on all relevant considerations because they failed to consider (and/or respond adequately to) all the documents submitted, or used standard letters which failed to cover all the issues raised; and/or
- were not customer focused or open and accountable because they delayed notifying

them that they would not be paid and also of the reasons for that non-payment; and/or

- failed to return telephone calls when this had been promised; and/or
- misdirected them about the status of their particular cases; and/or
- provided poor quality guidance about how to complete applications which was sometimes ambiguous; and/or
- otherwise provided poor quality advice and customer service to them.

## General findings

The Ombudsman made two general findings of maladministration. Each reflected the accumulation of many different mistakes found by the Ombudsman's investigation.

1. The Rural Payments Agency failed to '*get it right*', or '*be customer focused*', for a number of cases for the Single Payment Scheme in 2005 and, to a lesser extent, for the Single Payment Scheme in 2006.

The first finding of maladministration reflected problems with the quality and availability of information for farmers; problems with the quality of the checks made on claim forms when the Rural Payments Agency received them; problems in dealing with correspondence, particularly queries about mapping; failings in the service given to disabled claimants; and inconsistent decision-making, which meant that claims processors applied different standards to different claims.

2. The Rural Payments Agency failed to respond appropriately when it came to '*putting things right*' for individuals affected by the failures

of the Single Payment Scheme in 2005 and 2006.

The second finding of maladministration reflected the Rural Payments Agency's narrow approach to dealing with the effects on farmers of the Rural Payments Agency's administrative mistakes. In particular, they decided to measure complaints about poor administration against legal regulations, instead of administrative standards, despite concerns that this was unfair. The finding of maladministration also reflected the poor information for farmers about decisions and payments; inconsistency in the decisions about claims; and the general failure to look properly at the effects on customers of the Rural Payments Agency's own errors and omissions.

### What did that mean in practice for the complainants?

The report also makes a number of individual findings in respect of the nine complainants featured and how the Rural Payments Agency's maladministration affected them individually. The Ombudsman made a number of recommendations to ensure that the injustice identified in each of these cases would be remedied. These stories are outlined below.

Mrs A usually asked the Rural Payments Agency to check her claim forms for her. That service, gradually withdrawn over some years, no longer existed by 2005 when the new scheme started. Mrs A misunderstood the new claim form. Instead of claiming subsidy, she only staked a claim to payment in later years. No one questioned her mistake, even though the Rural Payments Agency knew this was a common error by farmers. Mrs A found out her mistake almost a year after submitting her claim, when she asked what had happened to her payment. Losing her Single Payment Scheme payment for 2005 left

Mrs A unable to pay all her bills, and relying on her partner's goodwill. The Ombudsman's main recommendations were that Mrs A should receive an apology; her £13,281.27 Single Payment Scheme payment for 2005; interest; the £100 cost of her appeal; and £500 by way of apology for the upset caused by the Rural Payments Agency's maladministration.

Mr B used an agent to complete his claim forms. Each year, like many farmers in his part of England, he reached agreements with contractors on how to handle his pea crops. Mr B's agent had been unable to obtain all the information he wanted from the Rural Payments Agency about how to treat these agreements for the Single Payment Scheme. Separately, Mr B made the mistake in 2005 of not telling his agent or the Rural Payments Agency about an agreement he had made. The result was that he and the contractor both claimed for the same land and Mr B received a penalty that reduced his payment for 2005 from around £6,000 to 1p. The Ombudsman decided that Mr B's mistake in omitting to update his agent or the Rural Payments Agency was the main reason for the penalty, but that the Rural Payments Agency's maladministration meant that Mr B had not understood that he had made a dual claim. The Ombudsman's main recommendations were that Mr B should receive an apology; £1,000 by way of apology for losing him the opportunity to have adequate information at the right time; the £100 cost of his appeal; and £500 by way of apology for the upset caused by the Rural Payments Agency's maladministration.

Mr C, who is deaf and in his 70s, had some trouble with his 2005 payments from the Rural Payments Agency. But in 2006 he had more serious problems. By mistake, he claimed for only some of his land, instead of all of it. He received only a few hundred pounds instead of several thousand. The Ombudsman decided that the



Rural Payments Agency's maladministration was not responsible for his mistake in completing his claim form and it was reasonable for them to treat his claim form as correct. However, the Ombudsman also found maladministration in that the Rural Payments Agency had failed to anticipate how customers with disabilities, such as Mr C, might be disadvantaged in claiming the Single Payment Scheme. The Ombudsman's main recommendations were that Mr C should receive an apology; £3,635.39 by way of apology for the effect on him of their maladministration; the £100 cost of his appeal; and £500 by way of apology for the upset caused by the Rural Payments Agency's maladministration.

Mr D made the same mistake as Mrs A, having misunderstood the guidance to farmers about claiming under the Single Payment Scheme. He only established his entitlements, when he should have established and activated them. He received nothing for his 2005 claim. The Ombudsman's main recommendations were that Mr D should receive £7,745.39 for his Single Payment Scheme claim for 2005, with interest; an apology; the £100 cost of his appeal; and £500 by way of apology for the upset caused by the Rural Payments Agency's maladministration.

Mr and Mrs E telephoned the Rural Payments Agency helpline to check how to claim under the Single Payment Scheme in 2005. Based on their information, Mrs E changed her claim form and lost all the 2005 payment. The Ombudsman's main recommendations were that Mr and Mrs E should receive an apology; £5,183.99 for their 2005 Single Payment Scheme claim; interest; the £100 cost of their appeal; and £500 by way of apology for the upset caused by the Rural Payments Agency's maladministration.

Mr F paid a penalty because of mistakes he made in his 2005 Single Payment Scheme claim. In 2005

Mr F told the Rural Payments Agency about his history of illness after suspected organophosphate poisoning. He visited the Rural Payments Agency offices to talk about his claim and when he made his Single Payment Scheme claim his covering letter said he did not know how to claim under the scheme. The Ombudsman decided that the Rural Payments Agency failed to recognise how their duties under the Disability Discrimination Act 1995 might affect Mr F's access to their service. He received no payment for his 2005 claim. The Ombudsman's main recommendations were that Mr F should receive an apology; £9,278.09 for his 2005 Single Payment Scheme claim; interest; the £100 cost of his appeal; and £500 by way of apology for the upset caused by the Rural Payments Agency's maladministration.

Mr G made the same mistake as Mrs A and Mr D, having misunderstood the guidance to farmers about claiming under the Single Payment Scheme. He only established his entitlements, when he should have established and activated them. This meant he received nothing for his 2005 claim, except £380 the Rural Payments Agency paid him by mistake. The Ombudsman's main recommendations were that Mr G should receive £2,088.42 for his Single Payment Scheme claim for 2005, with interest; an apology; the £100 cost of his appeal; and £500 by way of apology for the upset caused by the Rural Payments Agency's maladministration.

Mr H had carefully researched the Single Payment Scheme and the correct way to complete his 2005 claim. But he made a similar mistake to Mr C. He claimed for only some of his land instead of all of it. The Rural Payments Agency then told Mr H in writing, incorrectly, that they would pay his claim in full despite his mistake. They took a year to give him the correct information that he would not be paid. In that time, Mr H invested in necessary farm machinery believing he was going to receive about

£15,000 in a delayed payment. The Ombudsman decided that the Rural Payments Agency's maladministration was not responsible for Mr H's mistake in completing his claim form and it was reasonable for them to treat his claim form as correct. However, their failure meant he made a significant decision without accurate information. The Ombudsman's main recommendations were that Mr H should receive an apology; £500 and fresh consideration by the Rural Payments Agency of further compensation for the effect on him of having inaccurate information when he decided to replace his combine harvester; the £100 cost of his appeal; and £500 by way of apology for the upset caused by the Rural Payments Agency's maladministration.

Mr I had made his Single Payment Scheme claim successfully in 2005. In 2006 he needed information from the Rural Payments Agency in order to complete his claim form accurately. He telephoned and then repeatedly wrote to them, but was unable to make his claim until after the deadline for 2006 claims. The Rural Payments Agency refused to pay his claim. The Ombudsman found that Mr I would have claimed on time if the Rural Payments Agency had given him the information he needed. The Ombudsman's main recommendations were that Mr I should receive an apology; £11,479.13 for his 2006 Single Payment Scheme claim; interest; the £100 cost of his appeal; and £500 by way of apology for the upset caused by the Rural Payments Agency's maladministration.

In total the Ombudsman made fifteen recommendations, fourteen of these related to the individual complainants whose complaints were investigated and the injustice caused to them by the Rural Payments Agency's maladministration. The Ombudsman's fifteenth recommendation is intended to address some of the systemic issues identified in the report. The Rural Payments Agency have agreed to provide the Ombudsman,

and the complainants, with an action plan outlining what systemic changes are being made in order to address the maladministration found in the investigation.

# Chapter one

## Introduction

- 1 This report sets out the results of my investigation into complaints by:

Mrs A, referred by Mr Dan Rogerson MP;  
Mr B, referred by the predecessor of Ms Elizabeth Truss MP;<sup>1</sup>  
Mr C, referred by Mr Desmond Swayne MP;  
Mr D, referred by Mr Alistair Burt MP;  
Mr and Mrs E, referred by Mr Norman Lamb MP;  
Mr F, referred by Mr Alan Duncan MP;  
Mr G, also referred by Mr Burt;  
Mr H, referred by the predecessor of Mrs Nicky Morgan MP;<sup>2</sup> and  
Mr I, referred by Mr Robert Walter MP.

- 2 These nine complaints all concerned the Rural Payments Agency's (RPA's) administrative handling of applications to the Single Payment Scheme (SPS) in 2005 and 2006. I have conducted a single investigation into the matters raised by the complaints.

## The complaint

- 3 The complainants allege that RPA, an executive agency of the Department for Environment, Food and Rural Affairs (Defra), generally mishandled the complainants' applications<sup>3</sup> for SPS and their later representations about their applications. They are also aggrieved by the way that RPA have dealt with their complaints about RPA's mishandling. They allege that this amounts to **maladministration** by RPA.

- 4 In particular, the complainants allege that RPA:
- failed to take decisions based on all relevant considerations because they failed to consider (and/or respond adequately to) all the documents submitted, or used standard letters which failed to cover all the issues raised; and/or
  - were not customer focused or open and accountable because they delayed notifying them that they would not be paid and also of the reasons for that non-payment; and/or
  - failed to return telephone calls when this had been promised; and/or
  - misdirected them about the status of their particular cases; and/or
  - provided poor quality guidance about how to complete applications which was sometimes ambiguous; and/or
  - otherwise provided poor quality advice and customer service to them.
- 5 As a result of RPA's mishandling of their cases, the complainants claim to have suffered **injustice** in the form of financial loss and inconvenience, distress and additional expense in trying to resolve their applications.
- 6 By way of **remedy**, the complainants seek an apology, full financial redress and an assurance that the future handling of their applications will reflect accepted principles of good administration, good complaint handling and remedy, as embodied in my Principles.

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<sup>1</sup> Mr Christopher Fraser.

<sup>2</sup> Mr Andy Reed.

<sup>3</sup> In the main text of this report I have used 'claim' instead of the EU Regulations' terms 'application' and 'apply', as this is the term generally used by officials and farmers in speaking about SPS.

## Summary of the individual complaints

### Mrs A

- 7 Mrs A complained that RPA gave poor quality guidance on how to complete applications, misdirected her about the status of her case, and otherwise gave poor quality advice and customer service. In particular, Mrs A complained that RPA have declined to treat the errors she made in her 2005 SPS claim as 'obvious errors'. The errors meant Mrs A did not activate her entitlement. She further complained that RPA have been inconsistent in their decision about what represents 'obvious error' and that, having paid her £5,000 by mistake, recovered that overpayment.

### Mr B

- 8 Mr B complained, through his agent Mr J, that RPA delayed notifying him that he would not be paid and also of the reasons for non-payment; misdirected him about the status of his particular case; gave poor quality guidance on how to complete applications that was sometimes ambiguous; and otherwise provided poor quality advice and customer service to him and his agent. In particular, he complained about RPA's failure to reply to his agent's correspondence in May 2005 and the shortcomings in RPA's guidance and provision of information that led his agent to request clarification from them. He complained that he has suffered financial loss and avoidable trouble and inconvenience.

### Mr C

- 9 Mr C complained that RPA failed to take decisions based on all relevant considerations because they failed to consider and respond adequately to all the documents submitted

with his application form; and used standard letters that failed to cover all the issues raised; and provided poor quality advice and customer service. In particular, he said that RPA failed to take proper account of his circumstances in their decision about the errors in his 2006 SPS claim; omitted to update his bank details in 2005, which meant his Entry Level Stewardship payment went to a closed bank account that he could not access; and have still to pay all of his 2007 entitlement. Mr C said that RPA's errors have caused him financial loss and significant anxiety.

### Mr D

- 10 Mr D complained that RPA provided poor quality guidance that was sometimes ambiguous about how to complete applications; were not customer focused or open and accountable because they delayed notifying him that he would not be paid; misdirected him about the status of his particular case; and otherwise provided poor quality advice and customer service. In particular, he complained that the guidance about completing the 2005 claim form was misleading and that RPA took too long to give him a decision about his claim and then misled him into believing he would be paid. He further complained that they failed to take proper account of his circumstances when he first disputed their decision and that RPA's independent appeal panel was too closely guided by RPA staff. Mr D claimed that he has suffered financial hardship and anxiety as a result of RPA's mishandling. He said his family, particularly his wife, have suffered significant stress. He said that he has increased his overdraft, sold land and taken on extra part time work in order to meet the financial shortfall.

### Mr and Mrs E

11 Mr and Mrs E complained that RPA misdirected Mrs E when she asked them to clarify the RPA guidance, which they felt was incomprehensible, about claiming special entitlements in her 2005 SPS application. As a result, she altered her claim form and, in doing so, did not activate her entitlement for 2005. They complained that they have lost entitlement to payment for that year.

### Mr F

12 Mr F complained that RPA failed to take all relevant considerations into account when they decided to penalise him following his overdeclaration of land in his 2005 SPS application. Mr F complained that he has suffered a financial loss.

### Mr G

13 Mr G complained that RPA provided poor quality guidance that was sometimes ambiguous about how to complete applications; were not customer focused or open and accountable because they delayed notifying him that he would not be paid and the reasons for non-payment; misdirected him about the status of his particular case and otherwise provided him with poor quality advice and customer service. In particular, he complained that:

- RPA's guidance about completing the 2005 claim form was misleading;
- they made avoidable errors in processing his claim;
- they took too long to give him a decision about payment of his claim; and

- during that time, misled him into believing he would be paid.

14 He further complained that they failed to take proper account of his circumstances when he disputed their decision; and that their independent appeal panel was too closely guided by RPA staff. Without the SPS payment of about £2,642 Mr G had to support the farm with money from his other work and by making household economies. He complained that he and his family have suffered a great deal of worry and uncertainty and he has not been able to have a holiday for two years.

### Mr H

15 Mr H complained that RPA failed to take decisions based on all relevant considerations; were not customer focused or open and accountable because they delayed telling him that he would not be paid and also of the reasons for non-payment; that they misdirected him about the status of his case; that they provided poor quality guidance about how to complete applications; and that they otherwise provided him with poor quality advice and customer service. In particular, Mr H complained that RPA's guidance about completing the 2005 claim form was inadequate and they took too long to give him a decision about his claim. He further complained that they accepted his failure to activate it was an 'obvious error', only to reverse their decision a year later. He said he has suffered financial loss because of RPA's mistakes; has bought new farm machinery for £15,000 after they told him they would treat his mistake as 'obvious error'; and has suffered stress and anxiety.

## Mr I

16 Mr I complained that RPA failed to take decisions based on all relevant consideration because they failed to consider and respond adequately to all the documents submitted with application forms or used standard letters that failed to cover all the issues raised; were not customer focused or open and accountable because they delayed notifying him that he would not be paid; misdirected him about the status of his particular case; and provided him with poor quality advice and customer service. In particular, he complained that RPA's failure to produce an accurate set of maps for his land prevented him from making a complete 2006 SPS claim. He further complained that they failed to reply to some of his letters about the problems with his claim; they told him they had accepted his late claim, without penalty, but then changed their mind; and, during the appeal process, they failed to explain the reasons for their changed decision on his entitlement. Mr I said RPA's errors have caused him financial loss and avoidable upset.

## Summary of my decisions about the complaints

- 17 My findings refer to RPA, but Defra's close relationship with RPA means that what I say about the Executive Agency should be taken as also applying to the Department.
- 18 I upheld the complaints made by Mrs A, Mr B, Mr C, Mr D, Mr and Mrs E, Mr F, Mr G, Mr H and Mr I. In all nine complaints I found that maladministration by RPA caused an injustice to the complainant.

## General maladministration

- 19 I made two general findings of maladministration (chapter five of the report).
- RPA failed to 'get it right' or 'be customer focused' for a number of cases on SPS in 2005 and, to a lesser extent, in 2006.
  - RPA failed to respond appropriately when it came to '*Putting things right*' for individuals affected by the failures of SPS 2005 and 2006.

## Individual findings of maladministration and injustice

- 20 The general maladministration that I have identified affected all nine complainants.
- 21 Mrs A, as a result of RPA's maladministration, omitted to activate her 2005 SPS entitlements by mistake and had no chance to correct her error. She has:
- suffered the financial loss of not being paid for her 2005 SPS entitlements;
  - continued to suffer that loss for longer than she should have;

- lost £100 paying for an appeal when the case should have been dealt with as a complaint; and
  - experienced distress, inconvenience, frustration and outrage.
- 22 Mr B made a dual claim in SPS 2005 by mistake. As a result of RPA's maladministration, he did not understand that he had made a dual claim. He:
- lost the opportunity to have a proper understanding of the SPS rules for his type of farming and, therefore, to understand that he was making a dual claim;
  - lost £100 paying for an appeal, and incurred the costs of seeking leave for judicial review, when the case should have been dealt with as a complaint; and
  - experienced distress, inconvenience, frustration and outrage.
- 23 RPA failed to anticipate how customers with disabilities, such as Mr C, might be disadvantaged in claiming SPS. That was maladministration and limited Mr C's opportunities to get his SPS claim right, although the evidence we have seen in this investigation does not lead me to believe that the maladministration was the reason Mr C did not complete his 2006 claim form correctly.
- 24 Mr C has:
- suffered the uncertainty of not knowing whether, with a little more help from RPA, he would have received his full 2006 SPS payment; RPA's failure to take proper account of his disability made this injustice more serious;

- continued to suffer that uncertainty for longer than he should have;
  - lost £100 paying for an appeal when the case should have been dealt with as a complaint;
  - as a result of separate maladministration by RPA in the handling of his case, lost bank account interest and incurred bank charges; remains uncertain about what his correct SPS payments should be; and
  - experienced inconvenience, distress and frustration.
- 25 Mr D, as a result of RPA's maladministration, omitted to activate his 2005 SPS entitlements by mistake and had no chance to correct his error. He has:
- suffered the financial loss of not being paid for his 2005 SPS entitlements;
  - continued to suffer that loss for longer than he should have;
  - lost £100 paying for an appeal when the case should have been dealt with as a complaint; and
  - experienced inconvenience, frustration and distress.
- 26 Mr and Mrs E, as a result of RPA's maladministration, omitted to activate their 2005 SPS entitlements by mistake and had no chance to correct their error. They have:
- suffered the financial loss of not being paid for their 2005 SPS entitlements;
  - continued to suffer that loss for longer than they should have;
- lost £100 paying for an appeal when the case should have been dealt with as a complaint; and
  - experienced inconvenience, frustration and distress.
- 27 Mr F, as a result of RPA's maladministration, made a dual claim in 2005 SPS by mistake and claimed for other land which fell outside his SPS entitlement. RPA also failed to recognise how their duties under the *Disability Discrimination Act 1995* might affect his access to their service. He:
- was not paid for any of his 2005 SPS entitlements;
  - has continued to suffer that loss for longer than he should have;
  - lost £100 paying for an appeal when the case should have been dealt with as a complaint; and
  - experienced distress, inconvenience and frustration.
- 28 Mr G, as a result of RPA's maladministration, omitted to activate his 2005 SPS entitlements by mistake and had no chance to correct his error. He has:
- suffered the financial loss of not being paid for his 2005 SPS entitlements;
  - continued to suffer that loss for longer than he should have;
  - lost £100 paying for an appeal when the case should have been dealt with as a complaint; and



- experienced inconvenience, distress and frustration.
- 29 Mr H omitted to activate all his 2005 SPS entitlements by mistake and he was unable to correct his error in time to obtain full payment within the SPS rules. RPA's maladministration played no part in that. But it was maladministration by RPA that led Mr H to believe, for 12 months, that they would pay him. He has:
- suffered inconsistent messages from RPA, on top of the financial strain imposed by his mistake;
  - has continued to suffer that uncertainty for longer than he should have;
  - made a significant decision about investing in farm machinery for his business without accurate information on his 2005 subsidy payment;
  - lost £100 paying for an appeal when the case should have been dealt with as a complaint; and
  - experienced inconvenience, distress and frustration.
- 30 Mr I, as a result of RPA's maladministration, was unable to submit a complete and accurate SPS 2006 claim within the SPS deadline. He has:
- suffered the financial loss of not being paid for his 2006 SPS entitlements;
  - not received further SPS funds he would have been entitled to;
  - has continued to suffer those losses for longer than he should have;

- lost £100 paying for an appeal when the case should have been dealt with as a complaint; and
- experienced inconvenience, distress and frustration.

## Conclusion

- 31 I go on to set out my recommendations for putting right the injustice sustained by the nine complainants.

## Remedy

### My recommendations for remedy

- 32 The Defra Permanent Secretary accepted my recommendations.
- 33 We asked RPA to check the calculations for each complainant's SPS claim, so that the figures in the recommendations included the effect of items such as modulation and any amounts paid by mistake and later recovered. These figures will differ from the headline figures suggested by the euro amounts in claimants' entitlement statements.
- 34 My **first recommendation** is that the Permanent Secretary of Defra should send each of the nine complainants a personal, written apology which acknowledges the maladministration that occurred in his or her case and the injustice that resulted. This should be sent to them within one month of the date of my final report.
- 35 My **second recommendation** is that Defra and RPA should pay Mrs A £13,281.27 – the sum she would have received for SPS 2005 had she activated her entitlements, within two months

- of the date of my final report, in recognition of the financial loss that flowed from the maladministration I have identified.
- 36 My **third recommendation** is that Defra and RPA should pay Mr B £1,000 within two months of the date of my final report, by way of apology for losing him the opportunity to have adequate information at the right time. They should also reimburse the reasonable costs flowing from his attempted judicial review.
- 37 My **fourth recommendation** is that Defra and RPA should compensate Mr C, within two months of the date of my final report, for the effect on him of the maladministration I have identified in their handling of his 2006 claim to SPS. This injustice was worsened by RPA's failure to take proper account of his disability. The Permanent Secretary offered to pay Mr C 50 per cent of the SPS payment he had missed, giving an amount of £3,635.39.<sup>4</sup> In my view that provides an appropriate remedy for the uncertainty he has suffered in consequence of maladministration. RPA should also engage with Mr C about reimbursing him for the costs he incurred after RPA used the wrong bank account for his 2005 support payments.
- 38 My **fifth recommendation** is that Defra and RPA should pay Mr D £7,745.39 – the sum he would have received for SPS 2005 had he activated his entitlements, within two months of the date of my final report, in recognition of the financial loss that flowed from the maladministration I have identified.
- 39 My **sixth recommendation** is that Defra and RPA should pay Mr and Mrs E £5,183.99 – the sum they would have received for SPS 2005 had they activated their special entitlements, within two months of the date of my final report, in recognition of the financial loss that flowed from the maladministration I have identified.
- 40 My **seventh recommendation** is that Defra and RPA should pay Mr F £9,278.09<sup>5</sup> – the sum he would have received for SPS 2005 had he claimed correctly, within two months of the date of my final report, in recognition of the financial loss that flowed from the maladministration I have identified.
- 41 My **eighth recommendation** is that Defra and RPA should pay Mr G £2,088.42 – the sum he would have received for SPS 2005 had he activated his entitlements, within two months of the date of my final report, in recognition of the financial loss that flowed from the maladministration I have identified.
- 42 My **ninth recommendation** is that Defra and RPA should pay Mr H £500 in recognition of the upset he suffered because of their maladministration in telling him incorrectly that he would be paid in full for SPS 2005 and taking a year to correct their mistake. As well as paying this £500 (and the £500 in my thirteenth recommendation), Defra and RPA should look closely at whether, in the light of my Principles for Remedy and their understanding of farming businesses, they should compensate Mr H further for the effect on him of having inaccurate information when he decided to replace his combine harvester. They should

<sup>4</sup> Defra and RPA's calculations put Mr C's total 2006 SPS payment at £8,474.18. He received £1,203.41 in 2007, as a result of what he had claimed. That left an estimated financial loss of £7,270.77. Half of that is £3,635.39.

<sup>5</sup> Mr F claimed 25.04ha in 2005 and 22.24ha of that was dual claimed. A further 0.7ha was ineligible for SPS. His correct and activated land area for SPS 2005 was 2.8ha.

- send me, Mr H and the Member the reasons for their decision. They should do that within two months of the date of my final report.
- 43 My **tenth recommendation** is that Defra and RPA should pay Mr I £11,479.13<sup>6</sup> – the sum he would have received for SPS 2006 had he submitted his claim within the SPS deadline, within two months of the date of my final report, in recognition of the financial loss that flowed from the maladministration I have identified.
- 44 My **eleventh recommendation** is that Defra and RPA refund the £100 fee that each of the complainants paid to complete RPA's appeal process. They should do that within two months of the date of my final report.
- 45 My **twelfth recommendation** is that Defra and RPA should compensate the complainants for the costs associated with being deprived of the use of the relevant SPS payment. For simplicity, that compensation should take the form of interest from the end of the relevant payment window, unless the complainant demonstrates to Defra and RPA that they incurred greater losses. RPA and Defra should do that within two months of the date of my final report.
- 46 My **thirteenth recommendation** is that Defra and RPA should pay each of the nine complainants £500 in recognition of the inconvenience, distress, and frustration they experienced in consequence of the maladministration I have identified. They should do that within two months of the date of my final report.
- 47 My **fourteenth recommendation** is that RPA should give each of the complainants an up-to-date statement summarising the money paid to and recovered from him or her since the start of SPS, and any other information which RPA consider relevant to his or her understanding of his financial position. In Mr C's case, they should give him a full explanation of the land areas used to calculate his SPS payment and of reasons for the change in his common land rights, and if necessary, visit him. In Mr F's case, they should give him a full explanation of the payments he has received and, if necessary, meet him. In Mr I's case, RPA should tell him how his SPS claim stands in terms of any payments from the National Reserve. In each case, RPA should make good any further shortfall they identify between what the complainants have received in SPS and what they should have received. They should do that within three months of the date of my final report.
- 48 My **fifteenth recommendation** is that Defra and RPA should give me an action plan, copied to the complainants, their representatives and the Members, setting out the systemic changes they have made, or are making, that address the maladministration my investigation has found. They should do that within two months of the date of my final report.

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<sup>6</sup> The total payment due to Mr I was £26,285.22, but RPA have confirmed that they paid him £14,806.09 on 19 February 2007 and have not recovered that payment.

## The investigation – how we set about our work

49 In the course of the investigation we have made enquiries of Defra and RPA, examined their relevant files and visited Defra and RPA offices to gather background information. We have considered the papers supplied by Mrs A, Mr B, Mr C, Mr D, Mr and Mrs E, Mr F, Mr G, Mr H, Mr I and their representatives. We have spoken to Mrs A; Mr B and his representative Mr J; Mr D; Mrs E and her son; Mr G, and Mr I. We have also spoken to Mr L, the representative for Mr D and Mr G. My investigators had meetings with Mr C with his representative; and with Mr F with his representative; and with Mr H. We have shared a draft of this report with Defra and RPA; met Defra and RPA officials to discuss the draft report; and have received the Permanent Secretary's comments on it. We have shared a draft of this report with each of the complainants and, where appropriate, their representatives, and have received their comments. I have taken all the comments that we have received into consideration in reaching my findings and recommendations.

50 We used my powers to obtain papers from the National Farmers Union (NFU) and from the agent of Mr F's landlord. We have taken account of the reports on RPA's implementation of SPS published by the House of Commons Environment, Food and Rural Affairs Committee, the National Audit Office (NAO) and the House of Commons Public Accounts Committee and by Defra. I have also referred to my report *Cold Comfort: the Administration of the 2005 Single Payment Scheme by the*

*Rural Payments Agency*, which I laid before both Houses of Parliament in December 2009 under section 10(3) of the *Parliamentary Commissioner Act 1967*.<sup>7</sup>

51 I have not included all the information that we found during the course of the investigation but I am satisfied that I have not omitted anything of significance to the complaints and my findings.

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<sup>7</sup> Section 10(3) of the *Parliamentary Commissioner Act 1967* says: 'If, after conducting an investigation under section 5(1) of this Act, it appears to the Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit, lay before each House of Parliament a special report upon the case.'

## My role and remit

- 52 My role is determined by the *Parliamentary Commissioner Act 1967* (the 1967 Act), which enables me to investigate action taken by or on behalf of bodies within my jurisdiction in the exercise of their administrative functions. Complaints are referred to me by a Member of the House of Commons on behalf of a member of the public who claims to have suffered injustice in consequence of maladministration in connection with the action so taken.
- 53 When deciding whether I should investigate any individual complaint, I have to satisfy myself, first, that the body or bodies complained about are within my jurisdiction. Such bodies are listed in Schedules 2 and 4 to the 1967 Act. Secondly, I must also be satisfied that the actions complained about were taken in the exercise of that body's administrative functions and are not matters that I am precluded from investigating by the terms of Schedule 3 to the 1967 Act, which lists the matters over which I have no jurisdiction. The nine complaints considered in this report were directed at RPA, as the agency responsible for the administration of SPS. RPA are an executive agency of Defra, which are listed in Schedule 2 to the 1967 Act, and so Defra and their executive agencies are within my jurisdiction. Defra are a party to the complaint because of their governance role and their role in operational and policy decision making on the administration of SPS.
- 54 The nine cases were complaints about administrative functions, which are also within my jurisdiction. My Office will sometimes give a view on what the law is, but I do not dispute a court's findings. That is why I have taken careful note of the strict view taken in a judgment in the Northern Ireland Court of Appeal in December 2009 (the McAlinden and Hennity judgment) about the circumstances that amount to 'obvious error' under the law covering SPS.
- 55 I believe it will help the general understanding of the space that my Office fills in this complex area, where legislation and administration meet, if I set out some basic points. First, I am aware that the European Commission or the Court of Auditors might impose sanctions on Defra if either body concludes that the UK has adopted an over-generous approach to the Regulations.
- 56 Secondly, I am aware that sometimes court action may be a better course for a complainant to take than making a complaint to me about maladministration. Section 5(2) of the 1967 Act is about a complainant's access to a remedy by way of court proceedings to the injustice he or she has suffered – a route I call 'alternative legal remedy'. A complainant does not have to use it, but I do need to be satisfied that it is not reasonable to expect the complainant to use that legal remedy now or to have used it in the past. In each of the nine complaints covered by this investigation, I was satisfied that it was not reasonable for the complainant to have pursued an alternative legal remedy.
- 57 Thirdly, I am also aware that the European Court of Justice is the ultimate authority for interpreting EC legislation. I have no power to refer matters to this court. If approached, the European Court of Justice would provide a legal interpretation of the Regulations. My concern is simply to look at the administrative actions of RPA. The legal language of the Regulations (such as 'obvious error', 'force majeure' and 'exceptional circumstances') does not always cover the whole story of what is required for good administration. The courts have determined the question of how an anomaly in an SPS claim may or may not be accepted as an

‘obvious error’ within the Regulations. However, that determination leaves open questions about whether or not RPA’s administrative handling of any particular anomaly met their own standards and general administrative standards. Similarly, RPA’s administrative handling of a claimant’s case may have represented a significant shortfall against the wider standard of acceptable administrative practice, even though the claimant’s circumstances may fall outside the Regulations’ scope for taking account of ‘force majeure’ or ‘exceptional circumstances’. These further questions are very much Ombudsman territory.

body in question reviews its practices to ensure that similar failings do not occur.

- 58 Timeliness was a further issue of remit considered in each of these nine complaints. The aim of the time bar set by section 6(3) of the 1967 Act is to ensure that people pursue their complaints in a reasonably timely way. But the time limit is not absolute. Complaints about government departments and agencies may be difficult to pursue within tight timescales and there may be good and understandable reasons for delay. I was satisfied that, in each of the nine complaints I decided to investigate, either the complainant had made his or her complaint to a member of the House of Commons within 12 months; or there was good reason for me to use my discretion to waive the time bar.
- 59 My approach when I conduct an investigation is to consider whether or not there is evidence to show that maladministration has occurred that has led to an injustice. If there is an unremedied injustice, I will recommend that the public body in question provides the complainant with an appropriate remedy in line with my Principles for Remedy. The recommendations may take a number of forms such as asking the body to issue an apology, or to consider making an award for any financial loss, inconvenience or worry caused. I may also recommend that the

## Chapter two

### The basis for my determination of the complaints

#### Introduction – establishing the overall standard

<sup>60</sup> Comparing what actually happened with what should have happened is generally my starting point for determining whether or not a person has sustained injustice because of maladministration. I need to establish the facts relevant to the complaint. I also need to establish a clear understanding of the standards which governed the exercise of the administrative functions of the bodies and individuals whose actions are the subject of the complaint, at the time the events complained about occurred. This means understanding both the general standard and the specific standard for the circumstances of the case. I call this establishing the overall standard.

<sup>61</sup> The general standard comes from general principles of good administration and, where applicable, of public law. The specific standards come from the legal, policy and administrative framework relevant to the events in question.

<sup>62</sup> Having established the overall standard, I then assess the facts in accordance with the standard. Specifically, I assess whether or not an act or omission on the part of the body or individual complained about constitutes a departure from the applicable standard. If so, I then assess whether, in all the circumstances, that act or omission falls so far short of the applicable standard as to constitute maladministration.

<sup>63</sup> The general and specific standards which I have applied to this investigation are set out in the next sections of the report.

#### The general standard including the *Ombudsman's Principles*

<sup>64</sup> In 2009 I republished my *Principles of Good Administration, Principles of Good Complaint Handling and Principles for Remedy*.<sup>8</sup> These are broad statements of what I consider public bodies should do to deliver good administration and customer service, and how they should respond when things go wrong.

<sup>65</sup> The same six key Principles apply to each of the three documents. These six Principles are:

- Getting it right
- Being customer focused
- Being open and accountable
- Acting fairly and proportionately
- Putting things right, and
- Seeking continuous improvement.

<sup>66</sup> I believe the Principles of Good Administration address the facts I have seen in these complaints about RPA.

<sup>67</sup> Among other things, '*Getting it right*' means providing effective services with appropriately trained and competent staff. Public bodies should plan carefully when introducing new policies and procedures. Where public bodies are subject to statutory duties, published service standards or both, they should plan and prioritise their resources to meet them. They

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<sup>8</sup> Available at [www.ombudsman.org.uk](http://www.ombudsman.org.uk).

- should take reasonable decisions based on all relevant considerations, ignoring irrelevant ones and balancing the evidence appropriately.
- 68 *'Being customer focused'* is about ensuring people can access services easily; informing customers what they can expect and what the public body expects from them; keeping to commitments, including any published service standards; dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances; and responding to customers' needs flexibly.
- 69 *'Being open and accountable'* entails making public administration transparent and handling information as openly as the law allows. It is about giving people information that is clear, accurate, complete, relevant and timely, and being open and truthful in accounting for decisions and actions. Public bodies should take responsibility for the actions of their staff.
- 70 When a public body 'acts fairly and proportionately', it treats people impartially; with respect and courtesy; deals with people and issues objectively and consistently; and ensures that decisions and actions are proportionate, appropriate and fair. People should be treated fairly and consistently, so that those in similar circumstances are dealt with in a similar way. Any difference in treatment should be justified by the individual circumstances of the case. When taking decisions, and particularly when imposing penalties, public bodies should behave reasonably and ensure that the measures taken are proportionate to the objectives pursued, appropriate in the circumstances and fair to the individuals concerned. If applying the law, regulations or procedures strictly would lead to an unfair result for an individual, the public body should seek to address the unfairness. In doing so, public bodies must, of course, bear in mind the proper protection of public funds and ensure they do not exceed their legal powers.
- 71 *'Putting things right'* means that a public body acknowledges mistakes and apologises where appropriate; puts mistakes right quickly and effectively; provides clear and timely information on how and when to appeal or complain; and operates an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.
- 72 *'Seeking continuous improvement'* includes reviewing policies and procedures regularly to ensure they are effective; asking for feedback and using it to improve services and performance; and ensuring that the public body learns lessons from complaints and uses these to improve services and performance.
- 73 *'Getting it right', 'Being customer focused'* and *'Acting fairly and proportionately'* are the Principles of Good Complaint Handling that I found particularly relevant to this complaint.
- *'Getting it right'* includes those at the top of the public body taking the lead in ensuring good complaint handling, with regard to both the practice and the culture. Among other things, senior managers should be responsible and accountable for complaint handling; ensure the policy is delivered through a clear and accountable complaint handling process; and ensure learning from complaints is used to improve service. Complaint handling should focus on the outcome for the complainant and, where appropriate, others affected.
  - *'Being customer focused'* entails, among other things, dealing with complaints



properly and responding flexibly to the circumstances of the case. For public bodies, this means considering how they may need to adjust their normal approach to handling a complaint in the particular circumstances.

- ‘Acting fairly and proportionately’ entails avoiding a rigid, process driven, ‘one size fits all’ approach to complaint handling and ensuring that the response to an individual complaint is proportionate to the circumstances. By that, I mean taking into account the seriousness of the issues raised, the effect on the complainant and whether any others may have suffered injustice as a result of the same problem.

<sup>74</sup> ‘Putting things right’ is also a Principle of Good Complaint Handling, but I have found it most relevant to these complaints as a Principle for Remedy. ‘Putting things right’ entails considering fully and seriously all forms of remedy, such as an apology, an explanation, remedial action or financial compensation. It means, if possible, returning the complainant and, where appropriate, others who have suffered similar injustice, to the position they would have been in if the maladministration had not occurred. If that is not possible, it means compensating the complainant and others appropriately. There are no automatic or routine remedies for injustice resulting from maladministration.

<sup>75</sup> Remedies may be financial or non-financial, and may include an apology or explanation; remedial action (such as reviewing or changing a decision on the service given, revising published material); a revision of procedures to prevent the same thing happening again; or financial compensation for direct or indirect financial loss, loss of opportunity, inconvenience, distress, or any combination of these. Remedies may also need to take account of injustice that

results from pursuing the complaint, as well as the original dispute.

<sup>76</sup> The Principles for Remedy also recognise that ‘Acting fairly and proportionately means that remedies should be fair, reasonable and proportionate to the injustice suffered’. It is also reasonable for a public body that is looking at remedy to take into account any way in which the complainant has contributed to, or prolonged, the injustice.

<sup>77</sup> Payments for financial loss should be calculated by looking at how much the complainant has demonstrably lost or what extra costs they incurred. In addition, and as described in the Principles for Remedy, an appropriate interest rate should be applied to payments for financial loss, aimed at restoring complainants to the position they would have been in had the maladministration not occurred. As a general principle, and if there is not a good reason to use another rate, I recommend using the rate specified in the rules for the relevant courts.

## The specific standard – the Rural Payments Agency and the Single Payment Scheme in 2005 and 2006

78 The specific standard comes from the legal, policy and administrative framework relevant to the events covered by the nine complaints I have investigated, as I have explained. The specific standard I have used in this investigation includes RPA's published statements of their purpose; the statutory framework for SPS; RPA's own customer service commitments and the relevant parts of their guidance to farmers; and the relevant parts of RPA's guidance to their staff.

### RPA's objectives

#### RPA's mission in their 2004-05 Annual Report – summer 2005

79 RPA's mission in 2004-05<sup>9</sup> was:

*'to be a customer focused organisation delivering high quality services, including processing payments and receipts, conducting inspections and recording animal identification to government and the rural community.'*

80 Here is RPA's vision from their 2004-05 report.

*'A customer focused paying agency, respected as the European leader in efficient and effective administration and as an authoritative source of advice to policy makers:*

1. *Which provides customers with information and a choice in the way they access services.*

2. *Which plays its full part with others involved in delivering related services to its customers and the community ...*
3. *... Where technology and innovation are used to enable services to be delivered more efficiently and effectively.*
4. *Which embodies professionalism, being open and honest in its dealings with internal and external stakeholders and always acting with integrity.'*

81 One of RPA's objectives, given in the same report, was to: *'Provide fair, responsive and high quality services to its customers, minimising administrative burdens placed on the customers it serves.'*

#### RPA's mission in their 2005-06 Annual Report – summer 2006

82 In RPA's 2005-06 Annual Report RPA gave the same definition of their mission as they had in 2004-05. The Interim Chief Executive acknowledged that RPA had failed to meet that objective. He said RPA's goal for 2006-07 was to start the recovery work to improve performance.

### The legislative framework

#### SPS – the legislative basis

83 The Treaty that established the European Economic Community (now the European Community (EC)) included provisions for a Common Agricultural Policy (CAP). SPS resulted from 2003 reforms to the CAP. Three main EU Regulations provided the rules for SPS in 2005 and 2006 that are relevant to the complaints covered by this investigation. These regulations were:

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<sup>9</sup> The RPA 2004-05 Annual Report gave RPA's mission statement, vision, values, aims and objectives.

- *Council Regulation (EC) No 1782/2003, ‘establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers’;*
- *Commission Regulation (EC) No 795/2004, ‘laying down detailed rules for the implementation of the single payment scheme’; and*
- *Commission Regulation (EC) No 796/2004, ‘laying down detailed rules for the implementation of cross-compliance, modulation, and the integrated administration and control system.’*

### RPA’s role and responsibilities – what the legislation said

<sup>84</sup> RPA were (and are) the paying agency for SPS in England. All CAP payments, such as the SPS, may only be made by accredited paying agencies. The power to grant and withdraw accreditation rests with EU member states through a Competent Authority. In the United Kingdom the four agriculture ministers make up the Competent Authority.<sup>10</sup> (The agriculture minister for England is the Secretary of State for Environment, Food and Rural Affairs.) A ‘Co-ordinating Body’ acts as the Secretariat for the Competent Authority. It liaises with EU bodies for all four paying agencies in the United Kingdom. In 2005 and 2006 that meant RPA had a wide ranging responsibility to monitor claims and to provide reports about the administrative

checks made on SPS claims and the payments made to farmers.<sup>11</sup> I refer here only to the responsibilities relevant to these complaints. The preamble to *Council Regulation (EC) No 1782/2003* explained that payments should be made to beneficiaries in full and within the prescribed time, subject to any reductions allowed for in the Regulations. It also explained that the CAP support schemes provided for:

*‘direct income support in particular with a view to ensuring a fair standard of living for the agricultural community. This objective is closely related to the maintenance of rural areas.’<sup>12</sup>*

### The overall administrative framework required by the legislation

<sup>85</sup> Member states must have an integrated administration and control system (IACS<sup>13</sup>) for CAP subsidies and for payments in respect of rural development, such as the Environmental Stewardship schemes. *Council Regulation (EC) No 1782/2003* set that requirement and *Commission Regulation (EC) No 796/2004* detailed what IACS meant in practice. The control system had to have a computerised database for the identification of agricultural land – field by field. The system also had to have provision to identify each farmer making a claim; for tracing each payment entitlement; and for cross-checking the areas declared under SPS with each farmer’s payment entitlements and against different payment entitlements. The Regulations also defined

<sup>10</sup> Another Competent Authority operates to decide issues where there is some discretion, such as the deadline for SPS claims. In England this Competent Authority is the Secretary of State.

<sup>11</sup> Article 6 (1) and (2), *Council Regulation (EC) No 1290/2005* of 21 June 2005 on the financing of the CAP.

<sup>12</sup> Recitals 20 and 21 of *Council Regulation (EC) No 1782/2003*.

<sup>13</sup> IACS had started in the earlier CAP reforms of the 1990s and also became a general name used as shorthand for the range of support schemes that preceded SPS.

a payment window within which RPA had to make payments to farmers. For SPS 2005 it was 1 December 2005 to 30 June 2006.<sup>14</sup>

### Making a claim for SPS – what the legislation expected of RPA and of claimants

<sup>86</sup> Article 12 of *Commission Regulation (EC) No 795/2004* set out the terms of SPS claims. It required RPA to send out claim forms by 15 April in the first year of SPS, or no later than one month before the last date for lodging a claim to SPS. It also said that claims to establish entitlement to payment and for payment itself could be made at the same time.

<sup>87</sup> Article 22 of *Council Regulation (EC) No 1782/2003* provided that each year farmers should submit a claim that showed all agricultural parcels, the number and amount of payment entitlements and any other information asked for by the Regulations or the member state. Article 22(2) of the same Regulation provided that the member state would distribute preprinted forms based on areas determined the year before.

<sup>88</sup> Article 11(2) of *Commission Regulation (EC) No 796/2004* provided that farmers should submit their SPS claims by the date fixed by the member state, which was to be no later than 15 May in the relevant year. Articles 12 to 14 of that Regulation set out what such a claim must contain, and gave both specific requirements and general rules for claims. In particular, Article 12(2) set out that the preprinted forms would identify the payment entitlements and that the farmer would correct the preprinted form to show any amendments.

<sup>89</sup> Article 21 and Article 21a of *Commission Regulation (EC) No 796/2004* provided

that, except in cases of ‘force majeure’ and ‘exceptional circumstances’, late submission of claims would lead to the imposition of penalties in the form of daily percentage reductions in the claim value. If the delay amounted to more than 25 calendar days, the claim would be refused.

<sup>90</sup> *Council Regulation (EC) No 1782/2003*, Article 44(3) said that a farmer should declare the parcels corresponding to the eligible land accompanying any payment entitlement. With limited exceptions, these parcels should be at the farmer’s disposal for a period of at least 10 months.

### Correcting mistakes – what the legislation said about time limits

<sup>91</sup> Article 15 of *Council Regulation (EC) No 796/2004* set the scope for applicants to amend their claims to add land parcels or change the land use for individual parcels. They could do this, as long as they told the Competent Authority by 31 May in the year concerned. Applicants could make amendments only if the Competent Authority had not already informed them of irregularities in their claim or a future inspection revealed such irregularities. (After 31 May, farmers might also make corrections before the end of the 25 days specified in Article 21 of *Council Regulation (EC) No 796/2004*, but they would suffer penalties on the parcels being corrected.) That meant that if SPS claimants omitted to activate their entitlements and failed to realise before 31 May that they had not done so, they relied on RPA asking them what their intentions were, for example, during the ‘Level 0 validation’ checks (see glossary).

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<sup>14</sup> Article 28, *Council Regulation (EC) No 1782/2003*.

## Correcting mistakes – what the legislation said about ‘obvious error’

- 92 Some information about RPA’s checks on SPS claims should make it easier to grasp what the legislation on correcting mistakes could mean in practice. An SPS claim had to meet some minimum standards before RPA would accept it as a valid claim, that is, before it was lodged as a claim for SPS. RPA called this ‘*Level 0 validation*’. It had five parts that checked that the form gave: the identity of the farmer; answers to at least one of the form’s questions about establishing and activating (or not) the farmer’s SPS entitlements and claiming under other subsidy schemes; at least one complete line in the claim’s field data sheets; a signature; and an unaltered declaration (that the farmer understood and had complied with the terms of the EU Regulations for SPS).
- 93 RPA have told us that they had sight of the whole form when they performed these checks. In 2005 they had to key in each form. From 2006 they scanned in the forms.
- 94 ‘*Level 1 validation*’ was mainly about checking field sizes, codes or missing data. The computer system produced a list of errors that staff would follow up. Staff worked by error type for SPS 2005, not by claim. So several people could work on the same claim without looking at the whole picture. ‘*Level 2 validation*’, also led by a computer error list, was largely about mapping errors. By the May 2006 deadline for SPS 2006 claims, RPA had started the move to ‘whole case working’ which focused work by claim, not task. But this was a gradual change, which also required changes to RPA’s computer systems.
- 95 Article 19 of *Council Regulation (EC) No 796/2004* provided that farmers may adjust their claim at any time after its submission in cases of ‘obvious errors’ recognised by the Competent Authority.
- 96 A European Commission working document *AGR 49533/2002* recognised the difficulty in making consistent decisions about ‘obvious error’. It gave some guidance about the approach the Commission expected. It also said that the Competent Authority should be able to give an audit trail for each ‘obvious error’ adjustment that it made.
- 97 The courts have taken a strict view of what might represent an ‘obvious error’. A Northern Ireland Court of Appeal decision in December 2009<sup>15</sup> found that:
- an error was not obvious unless an official was bound to conclude there had been a mistake and that the form could not have represented the applicant’s true intent;
  - an error was not obvious if the claim left an official speculating about whether or not the applicant might have made a mistake; and
  - the fact that an official looking at all the claims (that is, with a ‘*shared pool of knowledge*’) might conclude that someone had failed to claim entitlements because a mistake did not make an error obvious – an ‘obvious error’ was one that an official considering only one claim form would identify.
- Although this judgment is not binding on the courts of England and Wales, it is likely to be

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<sup>15</sup> *McAlinden and Hennity GIR7697*, delivered 7 December 2009.

considered persuasive in their consideration of ‘obvious error’.

### Penalties – what the legislation said about incorrect claims

<sup>98</sup> *Regulation 1782/2003* also provided for two strands of penalties (which it called reductions and exclusions). One strand is about non-compliance with the eligibility conditions for payment, in other words, failure to follow the claim procedure set out by the Regulations. The other strand is about failures to keep land in ‘good agricultural and environmental condition’, also known as the cross compliance provisions.<sup>16</sup> The first strand, about eligibility conditions, is the one relevant to this investigation.

<sup>99</sup> Articles 49, 50 and 51 of *Regulation 796/2004* set out the effects of over- and under- declarations in SPS claims. If a farmer had declared in the claim more land than the Competent Authority decided should be covered by the claim, there would be a penalty. The Authority was to calculate the difference between the area declared and the area qualifying for payment and apply penalties, using the criteria given in Articles 49 to 51.

<sup>100</sup> Article 68(1) of *Regulation 796/2004* provided that eligibility penalties would not apply where the farmer had given correct information or was demonstrably not at fault. Article 68(2) of *Regulation 796/2004* further provided that the penalties would not apply where the farmer had said, in writing, that the claim was incorrect – as long as the Competent Authority had not already alerted the farmer to the error. This was known as ‘notified error’.

### Special circumstances – what the legislation said about ‘force majeure’ and ‘exceptional circumstances’

<sup>101</sup> The Regulations gave farmers scope to ask their Competent Authority to take account of special circumstances. For example, Article 40 of *Regulation 1782/2003* was about hardship cases. Preparations for SPS involved calculating a reference amount based on a farmer’s subsidy claims in the years 2000 to 2002. Article 40 allowed farmers whose production had been lower than usual in those years, because of ‘force majeure’ or ‘exceptional circumstances’, to ask RPA to base the reference amount on a part of the reference period unaffected by those factors or, if the whole reference period was affected by ‘force majeure’ or ‘exceptional circumstances’, to calculate the reference amount using the 1997 to 1999 period.

<sup>102</sup> Article 40 said this about ‘force majeure’ or ‘exceptional circumstances’:

*‘(3) A case of force majeure or exceptional circumstances, with relevant evidence to the satisfaction of the competent authority, shall be notified by the farmer concerned in writing to the authority within a deadline to be fixed by each member state.*

*‘(4) Force majeure or exceptional circumstances shall be recognised by the competent authority in cases such as, for example:*

*(a) the death of the farmer;*

*(b) long-term professional incapacity of the farmer;*

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<sup>16</sup> The two strands are set out in Article 24 and in Articles 6 to 7.

(c) a severe natural disaster gravely affecting the holding's agricultural land;

(d) the accidental destruction of livestock buildings on the holding;

(e) an epizootic affecting part or all of the farmer's livestock.'

<sup>103</sup> The Regulations for SPS referred to Article 40's description of 'force majeure' and 'exceptional circumstances' when they mentioned the other instances where farmers could ask RPA to consider special circumstances. Article 34 of *Regulation 1782/2003* required farmers to claim SPS by 15 May, 'except in cases of force majeure and exceptional circumstances within the meaning of Article 40(4)'. Article 72 of *Regulation 796/2004* provided that farmers wishing to rely on instances of 'force majeure' or 'exceptional circumstances' to avoid the imposition of penalties had to inform the Competent Authority within ten days of being in a position to do so.

<sup>104</sup> The European Commission provided some guidance on the application of 'force majeure' in notice C(88) 1696 *Force majeure in European agricultural law*, issued in 1988.

### Appeals – what UK legislation said about disputing decisions on entitlement

<sup>105</sup> RPA introduced their SPS appeal procedure in November 2004.<sup>17</sup> RPA have told us that they modelled the SPS appeal procedures on the appeals system used for previous subsidy schemes and that the SPS appeals system has evolved over time. A claimant who disagrees with RPA's decision on entitlement to SPS can ask RPA to reconsider. The first reconsideration will be done locally. It should result in a written

response to the person's representations. The next step is for the claimant to appeal and, generally, he or she will start the appeal by writing to RPA's customer relations unit or asking RPA to send out an appeal pack.

- A Stage 1 appeal is an administrative consideration by the customer relations unit. This is recorded on a form called the SP6(a).
- A Stage 2 appeal requires payment of a £100 fee (this is the maximum fee permitted by statute and is refunded if the appeal is successful). A panel of three people, drawn from a pool of external panel members selected by RPA and paid a fee for each hearing, hears the appeal. An RPA staff expert and an RPA appeals panel secretary from the RPA customer relations unit support the panel. That means they give administrative support and, if needed, advice on the meaning of the legislation. Claimants can opt for an oral or paper hearing. The panel makes a recommendation, usually recorded on less than half a page of A4. The panel recommendations we have seen sometimes, but not always, acknowledge any administrative mishandling of a case by RPA.

<sup>106</sup> The panel recommendation forms the basis of a recommendation to the Minister, prepared by the appeals panel secretary.

<sup>107</sup> The Minister's private office gives RPA the Minister's decision. The appeals panel secretary then writes to the claimant. Claimants can challenge the Minister's decision by asking the courts to permit a judicial review of the decision.

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<sup>17</sup> *SI 2689/2004*.

## Overpayments – what the legislation said about recovering incorrect payments

- <sup>108</sup> Article 73 of *Regulation 796/2004* was about the ‘recovery of undue payments’. It said that the farmer would repay undue payments (overpayments) with interest. The paying agency could also recover overpayments by deducting money from later payments to the farmer. Article 73(4) also said that farmers would not be obliged to repay money if error by the Competent Authority, or other relevant public body, had caused the overpayment and the farmer could not reasonably have detected the error. However, farmers were obliged to repay the money if: ‘*the error relates to factual elements relevant for the calculation of the payment concerned*’ and the Competent Authority had told the farmer about the decision to recover it within 12 months of the payment.
- <sup>109</sup> Article 73(5) said farmers were not obliged to repay an overpayment if the Competent Authority took more than 10 years from the date of the payment to tell the farmer that it was wrong. It also said that the period for possible recovery fell to four years if the farmer had acted in good faith.

## Disability discrimination legislation

- <sup>110</sup> Legislation<sup>18</sup> has made it unlawful for service providers to treat disabled people less favourably than other people for a reason

relating to their disability, unless such treatment is justified. It is also unlawful for service providers to fail to make reasonable adjustments for people with disabilities, where the existence of a physical barrier, practice, policy or procedure makes it impossible or unreasonably difficult for a person with a disability to use the service provided, unless such a failure is justified.

- <sup>111</sup> A person is disabled if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities. The legislation also covers people who have had a disability in the past.<sup>19</sup>
- <sup>112</sup> Government departments’ legal duties to disabled people changed during the time covered by these complaints. I describe here the duties relevant to RPA in the periods before and after December 2006.
- <sup>113</sup> The *Disability Discrimination Act 1995* (the 1995 Act) took effect on 2 December 1996. It became unlawful for service providers to treat a disabled person less favourably for a reason related to his or her disability. Government departments were service providers, although the 1995 Act covered only some of their activities. From 1 October 1999 service providers also had a duty to make ‘*reasonable adjustments*’ for disabled people. That could mean providing extra help or making changes to the way they provided their services. Among other things, the relevant Code of Practice on

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<sup>18</sup> Public bodies and service providers must comply with the *Disability Discrimination Act 1995* and the *Disability Discrimination Act 2005*.

<sup>19</sup> *Disability Discrimination Act 1995* (as amended), Schedule 1, sections 1 to 2.



rights of access for goods, facilities, services and premises<sup>20</sup> said:

*'The duty of reasonable adjustment is best met by the service provider trying to anticipate the types of problems which could arise and by training its employees to enquire rather than act on assumptions.'*

114 The Code of Practice acknowledged that there might be situations where it was not reasonable for a service provider to anticipate a particular requirement. It also said that sometimes the changes needed might be *'little more than an extension of the courtesies which most service providers already show to their customers'*.

115 From 4 December 2006 the *Disability Discrimination Act 2005* added to public bodies' duties in their treatment of disabled people. It amended the 1995 Act so that all public bodies also had a positive duty to promote equality of opportunity between disabled people and other people. The *Disability Discrimination Act 2005* also brought most functions of public bodies that had not been covered by the 1995 Act within the scope of disability discrimination legislation. For example, this meant it covered many decisions made by public bodies, as well as access to their services.

116 It is not my role to adjudicate on matters of disability discrimination law or to determine whether the law has been breached: that is a matter for the courts. My Principles of Good Administration do, however, say that the Principle of *'Getting it right'* includes acting

in accordance with the law and with regard for the rights of those concerned, and taking reasonable decisions based on all relevant considerations.

117 If it seems to me that someone's disability rights are engaged in relation to the events complained about, I expect the public body, in accordance with my Principles of Good Administration, to have had regard to those rights in the way it has carried out its functions. I also expect the body to have taken account of those rights as a relevant consideration in its decision making. If the public body is unable to demonstrate that it has done so, I will take that fact into account when considering whether there has been maladministration. In cases where I identify maladministration, it does not necessarily follow that I will also find that injustice has been caused as a result.

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<sup>20</sup>*Revised Code of Practice on rights of access for goods, facilities, services and premises*, published by the Disability Rights Commission in 2002; paragraph 2.14. The responsibilities of the Disability Rights Commission transferred to the Equality and Human Rights Commission from 1 October 2007.

## What RPA told their customers

<sup>118</sup> RPA have told us that they set out to tell farmers and others about SPS in several ways.

- In May 2004 the Minister responsible for the implementation of the SPS wrote to the Defra mailing list of 180,000 about SPS and the deadline for returning SPS claims.
- RPA also used the Defra mailing list to send out explanatory brochures in 2004-05.
- In February 2005 RPA sent the *SPS Handbook and Guidance for England 2005* (the 2005 Handbook) and the 2005 claim form to people who had claimed under previous schemes, together with the customer's 2005 SPS claim form.
- In February and March 2005 RPA ran 32 seminars for farmers, in 16 places around the country. About 8,500 farmers attended the seminars.
- On 18 April 2005 RPA published a supplement to the 2005 SPS Handbook and Guidance notes. They also sent out a booklet of frequently asked questions (FAQs) based on their seminars.
- RPA also provided video, CD and DVD versions of their seminars; updated the RPA and Defra websites with relevant information; ran media campaigns in the specialist press and regional newspapers; held regular meetings with their key stakeholders; and ran further seminars in April 2005 for land agents.

RPA also sent farmers sample SPS claim forms intended to allow farmers to familiarise themselves with the claim format before the SPS claim process started.

## Customer service standards

<sup>119</sup> In April 2004 RPA published *Our commitment to good customer service: A guide to the standard of service that we aim to provide to all our customers*. The leaflet said:

*'We are committed to providing a consistently high standard of service. We aim to make sure that you are dealt with quickly, politely and professionally at all times. We publish our performance targets in our business plan, and details of how we are performing are given in our annual report and accounts ...'*

<sup>120</sup> The leaflet said RPA aimed to answer telephone calls within 20 seconds and to return all calls within one working day, and they aimed to provide a full reply to letters within 15 working days of receiving them or to tell the person the reason for the delay. They aimed to acknowledge emails on the day they received them and to reply to them within 15 working days. They also said that they would offer customers a choice in the way they could contact RPA and would make sure the information they gave was easy to understand.

## How to complain and how to appeal

<sup>121</sup> The same leaflet explained how to complain and how to appeal. It said customers should first contact the person dealing with their case. They could then write to the head of operations in that office. RPA would respond within 15 working days. If still dissatisfied, customers could write to the customer relations unit, which would reply within 15 working days. After that, customers could ask their MP to take up the case or to refer it to the Parliamentary Ombudsman.

<sup>122</sup> The leaflet invited customers with special needs to contact RPA if they needed the leaflet in any other format. RPA also gave some points for customers. They asked them to:

- *‘provide your properly filled in claims and applications in plenty of time and provide any supporting documents we ask for;*
- *‘read scheme documents carefully, paying particular attention to the scheme rules and, if necessary, get professional advice. Our staff cannot give you advice, but they can give you information ...;*
- *‘... keep accurate and up-to-date records in a format approved by us;*
- *‘read all information carefully and make sure that you understand any declarations before you sign them;*
- *‘make a note of any contact between you and us. Keep a record of the date, the name of the person you have been in contact with and what they have said to you ...’*

<sup>123</sup> A new leaflet, published in March 2006, gave the same commitment to customer service as in April 2004. Their service standards made similar commitments to the ones made before on telephone calls, letters and emails. It again invited customers with special needs to contact them if they needed the leaflet in another format. An updated explanation of how to complain said that, on SPS matters, customers should contact the customer service centre.

## The 2005 and 2006 Handbooks

<sup>124</sup> On 19 April 2005 RPA announced how it would treat SPS claims where farmers were still waiting for complete mapping information. The press release said farmers could apply for SPS in 2005 without waiting for RPA to finish the Rural Land Register mapping of their holding. They gave examples of what farmers might still need to have from the Rural Land Register. For example, they said that farmers who were waiting for a response to an IACS 22 form should complete their field data sheets with the changes they had sent RPA, identify them as clearly as possible and make a note on the form to say that they had completed an IACS 22. The press release concluded:

*‘If the finally agreed area of a land parcel differs from the figure used to complete your application then, provided you have made a reasonable attempt to estimate the area accurately, we will not penalise an over-estimate and will adjust the area, either upwards or downwards, to the new figure.’*

### Advice on mapping in 2006

<sup>125</sup> The 2006 SPS Handbook included advice about registering land on the Rural Land Register. Among other things, it said that all land in the 2006 SPS claim should be registered. It also said that some fields might not appear on the preprinted forms or would need amendment. It said claimants still needed to ensure that they included all agricultural land accurately. It also said that, if claimants were waiting for RPA to respond to an RLE1 form,<sup>21</sup> they should send a covering letter with their claim that explained which fields were outstanding. Annex B gives

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<sup>21</sup> The RLE1 is the form used to register land, register changes to land or transfer land on the Rural Land Register. It replaced the IACS 22 form.

more information about what the Handbook said.

## What the Rural Payments Agency told their staff

<sup>126</sup> RPA staff had the SPS Handbooks as a source of information, along with further internal guidance. The material that follows is based on the papers we have seen and is only some of the material available to RPA staff.

### Claimants with disabilities

<sup>127</sup> In June 2004 RPA produced some guidance on giving assistance to claimants with disabilities. RPA have been unable to tell us whether or not the guidance was issued to staff, but we have seen no indication that it was withheld. The guidance gave some options for some difficulties and noted:

*‘Our customers are in business and therefore it is for them to seek assistance for themselves. There may be costs for the applicant. In no circumstances can RPA be held liable for completing forms but in instances where someone had no other option than to assist it would be necessary to have in place a disclaimer against the action and [for it to be] fully recorded why this was done.’*

The guidance said it was primarily up to operations managers to decide what

*‘realistically can be achieved within time and costs constraints’* and added:

*‘... there are no existing budgets available to undertake the additional assistance the claimant with disabilities may request unless there are sufficient printing type budgets on each site.’*

It gave the equal opportunities section and the chief executive’s office as sources of advice for staff.

### Contacting claimants

<sup>128</sup> RPA guidance to staff asked them to telephone claimants three times before resorting to sending a letter. In particular, guidance issued in September 2005 said that staff should make all initial contact with customers by telephone and that after three unsuccessful attempts to speak by telephone, staff could send a letter.<sup>22</sup>

### Correcting mistakes – ‘obvious error’

<sup>129</sup> In 2005 and 2006 RPA provided staff with guidance on identifying ‘obvious errors’ in SPS claims. Guidance about error checking on the claim form, issued in September 2005, told staff to follow the ‘obvious error’ framework and to record the error on an ‘obvious error’ spreadsheet already sent to staff. They were also to make a note of the error in the system’s ‘task notes’. The guidance said team leaders would review these records.<sup>23</sup>

<sup>130</sup> RPA made several updates to the ‘obvious error’ guidance. For example, on 21 September 2005, Briefing Note number 82/2005, called Obvious Error Guidance, said each case should be

<sup>22</sup>Briefing Note number 89/2005, released on 23 September 2005, answers for staff on some frequently asked questions about ‘Level 1 validation’ tasks.

<sup>23</sup>D5.5.1 – Perform Error Checking on Claim Form, issued 8 September 2005.

considered on its merits; that an error could not be considered obvious just because it was a silly mistake notified by the applicant; and that the error must be genuine with no possibility of fraud or dishonesty. It listed some categories of irregularities that *'might usually be considered as "obvious errors"'*. These included errors of a clerical nature, obvious in a simple examination of the claim, such as boxes not filled in or information lacking; errors detected as a result of a consistency check, such as arithmetical errors or a parcel declared twice; and errors detected as result of cross checks with independent databases, such as the Rural Land Register. It noted that errors detected in cross checks would not necessarily be 'obvious errors', but transcription errors identified in this way were likely to be accepted as obvious. The guidance asked staff to refer possible 'obvious errors' that fell outside these categories to the scheme management unit. Briefing Notes 83/2005 and 91/2005, issued on 21 and 23 September 2005, gave further examples of errors that might be considered obvious.

- 131 Guidance issued in September 2005<sup>24</sup> included two examples of errors by claimants in the start date for the period that land was at their disposal. The start date had to be between 1 October 2004 and 30 April 2005. (The claim form explained that RPA would assume a date of 1 February 2005 if a claimant left the box blank.) If the claimant had put 1 October 2005, the Briefing Note said RPA should telephone the claimant and ask him or her to confirm the 10 month start date in writing. A 2005 start date could be considered as an 'obvious error'.

If the claimant had put a start date before the start date of the 10-month period, such as 1 May 2004, the note said RPA should contact the claimant and ask for confirmation of the start date. It said this error was not an 'obvious error'.

- 132 A Briefing Note first issued on 21 October 2005 and updated in January 2007,<sup>25</sup> dealt with possible 'obvious errors' in columns I and J of the field data sheets of the SPS 2005 claim form. It said staff should view each claim individually and the way all the field data sheets within a claim had been completed should be reviewed collectively, not sheet by sheet. The guidance said staff should contact the customer if he or she had indicated at questions 1 and 3 on the form that they wanted to establish and activate entitlements, but had left columns I and J blank. If, for example, the claimant had claimed for commons or had completed columns I and J for some fields, the guidance said staff should not contact the claimant because no error was obvious.

- 133 In August 2006<sup>26</sup> RPA guidance said they had allowed a *'small minority'* of customers to activate their entitlements under the 'obvious error' provisions.<sup>27</sup> It said these customers had ticked part C of the SP5a (Activation of entitlements) to give the answer no; completed part D (Land at your disposal) with a valid 10 month start date; and left column J on the field data sheet (Area for which entitlements to be activated) blank. It said:

*'Applications completed in this manner reflect an intention not to activate*

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<sup>24</sup>Briefing Note number 89/2005.

<sup>25</sup>Briefing Note number 133/2005.

<sup>26</sup>Briefing Note number 218/2006, issued on 4 August 2006.

<sup>27</sup>In commenting on the draft report, RPA told us that this was an additional small minority on top of the claims already agreed as 'obvious errors' under earlier briefing notes. We have not seen any evidence of the numbers involved.

*entitlements for 2005. However, by completing a 10-month start date for “Land at your disposal”, the customer has created an inconsistency suggesting they do wish to activate entitlements which can be accepted under the “obvious error” provision.’*

The guidance asked staff to revisit similar cases which had previously been turned down. It then listed a further set of criteria. Staff were to refer cases to the scheme management unit, without contacting the claimant, if the claimant had answered yes to question 1 on the SPS claim form (to establish entitlements); no to question 3 of the claim form (to activate entitlements); put a date between 1 October 2004 and 30 April 2005; and left column J of the field data sheet blank for all fields. The guidance invited staff to refer cases where claimants had failed to activate fields, but there was a possible inconsistency in the claim form.

- <sup>134</sup> For the 2007 SPS year RPA started using ‘nonpay’ letters to contact claimants at the checking stage. The purpose of the ‘nonpay’ letter is to inform claimants that they have submitted an application form, but have failed to include any data within the form or any indication that they wish to receive a payment that year. For example, it may be that the claim has no fields or areas entered for activating SPS entitlements. Applicants may make changes to add land and activate it, and/or change land use without penalty, up to the amendment deadline of 31 May. Applicants simply adding additional land parcels to their application for

activation of entitlements would not fall foul of the Regulations’ notification rule.

### Penalties – dual claims

- <sup>135</sup> RPA gave staff guidance about dealing with cases where more than one farmer had claimed the same parcel of land. We have seen that there were several different ways in which a dual claim could happen, but RPA intended to take the same initial approach in every situation. They directed staff to write to all customers involved in a dual claim. The letter explained that more than one person had declared the same fields and asked the claimant to tell them, in writing, why the duplication had happened. The letter warned that penalties might be applied.<sup>28</sup>

### Dealing with mapping queries

- <sup>136</sup> I have based this summary of what should have happened in the mapping element of Mr I’s case on information RPA gave us in an interview.
- When RPA received Mr I’s requests for mapping information,<sup>29</sup> they would have put the details he gave them into the mapping computer system. They would then have cross referenced the details he had provided with the details they found on their computer screen or *‘piece[d] it together’*.
  - When Mr I applied for SPS in 2006, RPA would have sent him a pre-populated form

<sup>28</sup>Briefing Note 155/2005 Level 2 – Dual claim instructions, issued 5 November 2005, and May 2010 Simple Dual Claim guidance.

<sup>29</sup>In February 2005 Mr I sent RPA an application to add some land to the Rural Land Register. He made a 2005 Scheme claim without receiving their response, in line with RPA’s 2005 guidance. In August 2005 RPA sent Mr I his updated maps and in September 2005 he asked for corrections to the maps. RPA made those corrections but they omitted to tell Mr I about them.

based on the information they had used in 2005. They would have asked him to check that the information was correct and to make any changes.

- RPA said that claimants who were waiting for mapping responses could speed up the process by sending a written request for up to date maps because RPA were able to print and send out maps relatively easily.

### Late claims in 2006

<sup>137</sup> The RPA's guidance to staff on dealing with late claims in 2006<sup>30</sup> was that claims received from 1 June to 9 June 2006 would incur a reduction of 1 per cent per working day (after the deadline of 31 May). Any claim received after that would be rejected. The note added:

*'Some customers have been sent an SPV1 letter advising them that their application could not be lodged due to missing information. The customers concerned may have supplied the missing data by a variety of methods. These could be:*

- *By resubmitting their original application because they asked for it to be returned to them.*
- *Information taken by CSC staff over the telephone and added to notes on the SBI.*
- *Written confirmation from the customers. This would be scanned as a letter.*

- *RITA needs to be checked for every method of submission when determining the lodgement date.'*

<sup>138</sup> The EU Regulations were later amended to extend the claim submission deadline to 16 June 2006, with the late claim penalty period running until 10 July 2006.

### Handling complaints

<sup>139</sup> RPA guidance in June 2006 was that staff should provide as comprehensive a response to customer queries as was possible, as that would avoid escalation to higher level complaints or formal appeals. A Briefing Note for staff gave six actions that staff should take as part of considering whether or not to refer a query to the scheme management unit. These were: check on RITA that no one else was working on the same query; check on RITA whether or not an entitlement statement had been issued and whether it was provisional or definitive – if a definitive statement was incorrect, they should email the scheme management unit; check on RITA that the customer had no other SBI; check whether the claim was on hold; check the claim status to see whether outstanding tasks have prevented the system from issuing a definitive statement; and make a note on the system to show that they were working on the case.<sup>31</sup>

### Ex gratia payments

<sup>140</sup> It is a generally recognised principle that a public body should make good where it has caused someone a loss or to incur expense

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<sup>30</sup>Briefing Note 175/2006, issued on 1 June 2006.

<sup>31</sup> Briefing Note 180/2006, issued on 6 June 2006, about resolving entitlement queries on 2005 claims.

through maladministration. RPA follow the guidance in HM Treasury's guidance to government departments, *Managing Public Money*.<sup>32</sup> The guidance gives some of the factors to consider in deciding financial compensation where maladministration has led to injustice or hardship. They include:

- *'... Whether someone has faced any additional costs as a result of the action or inaction of a public sector organisation, e.g. because of delay;*
- *Whether the process of making the complaint has imposed costs on the person complaining, e.g. lost earnings or costs of pursuing the complaint;*
- *The circumstances of the person complaining, e.g. whether the action or inaction of the public sector organisations has caused knock on effects or hardship ...'*

<sup>141</sup> Defra and RPA have guidance about making ex gratia payments in cases where administrative error on their part has had adverse effects on a customer, for example where their errors have led someone to miss out on payment of SPS. Any ex gratia payments come from national or Defra funds and do not risk disallowance. In commenting on a draft of this report, the Permanent Secretary said that ex gratia payments should only be considered where a remedy cannot be found within the scheme rules.

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<sup>32</sup> Annex 4.14 Complaints and Remedy in *Managing Public Money*, available from [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk). *Managing Public Money* replaced *Government Accounting* in 2007.



# Chapter three

## The key facts leading to the complaints

### Introduction

<sup>142</sup> In this chapter, I set out the key facts needed to understand my general findings of maladministration and to put the complainants' stories in context. The facts cover what happened before and after the deadline for SPS claims in May 2005; and how RPA dealt with farmers' representations and complaints about their claims.

<sup>143</sup> I have based these facts on two main areas of evidence. The first area is the evidence the investigation has gathered about the individual complaints. This is set out in chapter four and, in more detail, in Annex E. The second area is the evidence about the operational and policy decision making about SPS in Defra and RPA and from earlier investigations of RPA and SPS. The administrative chronology gives a more detailed account of this in Annex A. The guidance to staff that I refer to is covered in more detail in the chapter on the specific standard.

### SPS money mattered to farmers – large and small

<sup>144</sup> RPA recognised that SPS payments were central to farmers' planning and to their income. They knew that non-payment of the subsidy could threaten the livelihoods and well-being of farmers. The EU Regulations call this area of CAP subsidy '*income support*'. RPA had seen, in earlier subsidy schemes, how much farmers could suffer when hit by problems such as late payment by RPA or farmers' own mistakes in claim forms.

### RPA were good in parts

<sup>145</sup> Farmers had been able to expect a reasonably good level of service from RPA before SPS started in 2005. They had had relatively easy access to information and, although there were exceptions, timely payment. RPA's papers confirm that in 2001-02 they started scaling back the level of service they gave farmers through, for example, drop-in centres. The evidence we have seen from farmers is that some felt able to obtain personalised information about their subsidy claim forms from RPA until 2004. The farmers who complained to me have told us that, by 2004, they had a good understanding of how to claim under the subsidy system that SPS replaced. Defra's 2002 Clayton Report, about how farmers got information, had said that farmers' preferred method of communication was word-of-mouth, and that access to a method of asking questions was seen as essential. RPA recognised that farmers were used to calling at RPA offices to deliver forms or seek information.

### 'A hell of a cultural change'

<sup>146</sup> A major overhaul of RPA, known as the change programme, started in 2001. It aimed to improve the administration of CAP subsidy and, as part of that, to improve the level of staff and customer satisfaction. From 2001-02 RPA had started to close their network of drop-in centres, despite worries about the loss of face-to-face contact. The drop-in centres that survived after 2004 were simply to collect forms. RPA believed farmers' form filling was equally good with or without access to advice in person. They also felt unable to give farmers such a high level of personal contact as they had in the past. RPA's new approach was to

direct enquiries through a single call centre. The RPA Chief Executive in place from 2001 to March 2006<sup>33</sup> said, in evidence he gave in 2007, that he had recognised that the change of approach was going to be ‘a hell of a cultural change to customers’. Part of the culture change reflected RPA’s move to having a smaller number of offices and a telephone-based customer service centre, instead of having nine regional offices accepting and processing claims. This removed the geographical link between claimants and the processing office. In 2010 RPA increased the level of information about claims that it could give at drop-in centres.

<sup>147</sup> In commenting on a draft of this report, the Defra Permanent Secretary said:

*‘A very significant amount of information was provided to farmers through the various booklets and road shows that preceded publication of the [SPS 2005] Handbook. Our understanding is that this extensive publicity effort did prove helpful to a significant number of farmers who took up the opportunities provided to familiarise themselves and prepare for the introduction of the new scheme. The drop in centres were not removed in 2005 but were very much open and provided the same basic checking service as they had done in at least the preceding two years. What is more difficult to evidence, but [is] the collective understanding of those involved in RPA and predecessor bodies, is that a more informal, individual*

*service did exist at drop in centres during the 1990’s [sic] but had been phased out around the turn of the century. It would be more accurate to say ... that the customer service centre (CSC) (a year round service) replaced not the drop in centres (only open for around two months a year) but the facility for farmers to call the individual processing sites who administered their claims ... There were initial problems with calls going unanswered and a number of examples of mis-leading advice being given. However, overall the CSC answered around 160,000 calls and the end result whereby 99 per cent of entitlements were activated suggests that it must have played a positive role in the vast majority of cases.’<sup>34</sup>*

### Quality and deadlines

<sup>148</sup> In 2005 (and in 2006) RPA’s public statements talked about customer focus and quality. Their mission included the goal of being: ‘a customer focused organisation delivering high quality services’. Their objectives included: providing ‘fair, responsive and high quality services to its customers, minimising administrative burdens placed on the customers it serves’. In practice it had proved increasingly difficult in 2004-05 to meet these goals.

<sup>149</sup> Mapping land on RPA’s digital database, the Rural Land Register, was a necessary part of making a valid SPS claim. In autumn 2004

<sup>33</sup> Johnston McNeill left RPA in March 2006. Mark Addison stepped in as Acting Chief Executive from March to May 2006. Tony Cooper took over as Interim Chief Executive in May 2006 and was made permanent in July 2008. He left RPA in July 2010.

<sup>34</sup> The focus of this report is on the experience of farmers and RPA’s 2005 figures were that 11,331 farmers (Annex A, paragraph A89) had activated none or only some of their entitlements out of 116,000 claimants, that is, the information in 2005 was that more than 9 per cent of individuals had forgone claiming all or some of the money they could have claimed in SPS.

the database went live, six months later than planned. In 2004 and 2005 the NFU had raised concerns with RPA about the backlogs in land registration on the Rural Land Register. Later, in October 2006, the Permanent Secretary of Defra said:

*‘... problems with the mapping were probably one of the key challenges. There was a vast increase in the number of mapping changes, which had either not been previously reported or were produced – incentivised – by the new scheme.’<sup>35</sup>*

### **RPA’s IT preparation for SPS was ‘just in time’**

<sup>150</sup> At the same time as RPA struggled to handle their mapping work, they were setting up their computer systems for handling SPS claims. These were still evolving when the claims deadline passed in May 2005. At the end of 2004 Defra and RPA had decided to continue with a system called RITA for handling SPS. They had found more flexibility within their schedule for updating RITA and their supplier was confident about keeping to timetable. The flexibility came from completing different parts of RITA ‘just in time’ for each step in processing 2005 SPS claims. For example, that would mean staff could start to key in information from claim forms from April 2005; start validation cross-checks and begin to select claims for cross compliance inspections at the end of April 2005; and start work on entitlements, claim value calculation and payment from July 2005.

<sup>151</sup> In February 2005 RPA sent farmers the 2005 SPS Handbook, which told them the detailed scheme rules. Internally, RPA had recognised that the language used in their draft of the Handbook was inconsistent and that it could confuse the reader. This potentially confusing language remained in the Handbook they sent farmers. RPA asked the farming bodies to comment on the draft handbook text (with a three day deadline). Among other things, the NFU asked:

*‘What can the RPA customer expect from the RPA in terms of help with completing the forms? Will there be a facility for hand delivery and checking – presumably at the current RPA processing sites, plus Worcester and Newmarket?’*

From the papers we have seen, we do not know how RPA replied to the NFU’s question. Of the nine people who have complained to me, four have said that they had previously received help with checking claim forms from officials within two years of SPS starting, and that this was not available in 2005.

### **Signs of trouble to come**

<sup>152</sup> During the run-up to SPS, RPA had lost staff under what they call a ‘voluntary exit scheme’, although they were struggling to do all the work needed. The Chief Executive of RPA during 2001 to 2006 later said that, on reflection, he wondered why it had not crossed his mind that there would be a problem if RPA lost staff with experience in dealing with farmers when customer relations were going to be so important.<sup>36</sup>

<sup>35</sup> During evidence about the administration of SPS to the House of Commons Committee of Public Accounts.

<sup>36</sup> In an evidence session of the House of Commons Environment, Food and Rural Affairs Committee in January 2007.

<sup>153</sup> RPA's new customer service centre, set up as a central point to answer farmers' questions, opened in February 2005. It was initially unable to deal with the number of calls it received – up to 12,000 a day. RPA have told us that call numbers rose from 900 a day in February 2006 to more than 7,000 a day in April and May. It expanded its opening hours and call answering capacity in response. RPA's 2004-05 Annual Report said:

*'We accept that there are lessons to be learnt in dealing with the new customer base, in particular in responding to the near tenfold increase in volumes of enquiries, which required a move to contingency plans.'*

NFU council delegates raised a series of problems at their April 2005 meeting, which senior managers from RPA addressed. Delegates cited: the difficulty of getting through on the RPA Helpline; the absence of support for SPS claimants from RPA and Defra; examples of conflicting or bad advice from RPA on special entitlements, among other things; concern about fruit, vegetable and potato authorisations; and the risk that two farmers might claim for the same piece of land.

<sup>154</sup> In the weeks before the May 2005 deadline for SPS claims, RPA countered farmers' concerns about the scope for mistakes in their claims. RPA's message to the specialist press was that they would *'of course'* use the 'obvious error' provisions in the Regulations. According to the minutes of the meeting, the RPA senior managers at the NFU council's April 2005 meeting told the NFU that cases of genuine farmer error would be recognised. Without making any specific promises, they said that RPA would try to be flexible with errors. In

commenting on a draft of this report the Defra Permanent Secretary said:

*'At this point removed from events, it is very difficult to know what was said on those occasions, but the belief of those involved within RPA and Defra at the time is that staff were invariably careful to make clear that while the Agency would be as flexible as possible, this was in the context of the legal provisions, particularly "obvious error". The NFU in particular would have known that there were limitations on the flexibility. While we cannot vouch for every conversation, I do not believe, therefore, that messages given at the time were mis-leading.'*

She also said: *'Our view is that the Agency demonstrated in practice the flexibility that was suggested by messages given at the time.'* The NFU have told us that among their recollections of the period is the sentiment from the RPA customer service centre in 2005 – for claimants just to get the claim form in to RPA. The 2005 SPS Handbook summarised the 'obvious error' provisions, and what they might mean. But the Handbook's summary did not explain that 'obvious error' was a legal concept that might be open to interpretation by the courts.

### **RPA's systems problems start**

<sup>155</sup> RPA's systems failed to behave as RPA had expected. First, RPA were unable to start keying in the SPS claims for three weeks. That was because of early problems with the system used for 'high volume data capture'. (RPA scanned in the claims from 2006 onwards.) Later problems arose from the task-based approach used in handling the 2005 SPS claims. RPA staff worked on a list of tasks from many different claims, instead of working on complete claims. RPA found the number

of system-generated 'tasks' for the 2005 SPS claims grew unpredictably. The more tasks RPA cleared, the more tasks they needed to clear. In November 2005 about 440,000 tasks were neither cleared nor underway, out of 500,000 tasks in total. By early March 2006 the total number of tasks was just over 800,000, of these, 188,000 tasks were outstanding. RPA had to complete these tasks before they could say all claims were fully 'validated' and therefore fit for a final decision – and payment. RPA moved to working case-by-case for SPS 2006.

- <sup>156</sup> In 2005 (and in 2006) RPA processors were without a case management system that would give them an overview of all the relevant information for each claim. RPA's intention had been to have one source of customer information, open to any authorised person in RPA, by the time they finished their change programme at the end of 2004.

### RPA's work on incomplete forms

- <sup>157</sup> Establishing entitlements under SPS ensured the farmer could claim subsidy on the land, even if he or she did not want to claim it in 2005. But it was also essential to activate the entitlements in the 2005 claim form if he or she wanted to receive any money.
- <sup>158</sup> RPA's initial checks on claim forms, the ones intended to make sure that claims met a minimum standard for the claim to be lodged, were basic. The minimum requirement in the section of the checklist that covered the different elements of SPS and other relevant schemes was for the farmer to have ticked yes to the question: *'Please confirm that you are applying to establish entitlements for the areas that you have entered in column I of your field data sheet'*, **or** to have completed column I on the field data sheet (SP5b); **or** to have ticked yes

to the question about confirming that he or she was applying to establish special entitlements; **or** to have ticked yes for any box in the column on the common land field data sheet that asked whether the farmer was establishing entitlements for those rights; **or** to have ticked yes to the question about the area payment for nuts, **or** about aid for energy crops **or** about protein crop premium **or** about hill farm allowance.

- <sup>159</sup> RPA have told us that by April 2005 their work on these initial checks had alerted them to the 'common error' of omitting to activate entitlements. RPA named the failure to activate entitlements in a list of common errors included in the supplementary guidance they sent farmers in April 2005. Also in April 2005, an RPA lawyer advised colleagues that RPA had no legal obligation to return forms at all, or to query incomplete data. But he also pointed out that, from a policy perspective, *'there could be a customer service driver that encourages RPA to do its best to ensure that as many eligible applicants as possible apply to the scheme'*. In commenting on a draft of this report, the Defra Permanent Secretary said that this was the opinion of one lawyer, not a collective view. She said:

*'The collective view in the Agency was that there was no anomaly as, in seeking to establish entitlements, the claimants had submitted a valid claim and the option not to activate those entitlements was a legitimate one.'*

Later, in 2007, RPA started sending farmers 'nonpay letters' if RPA checks found the farmer had omitted to activate any entitlements. Those letters told farmers they would not receive a payment without activating the entitlements. RPA have told us that farmers

who received a nonpay letter could change their claims up to 31 May without penalty.

### Delay in paying farmers for SPS 2005

<sup>160</sup> In late 2005 RPA did some more work on cases where farmers had omitted to activate their entitlements. They looked at claims where the farmers had said in one part of their claim that they wanted to activate all entitlements entered in column J, but had then left column J blank. RPA contacted the claimants to check their intentions and later paid a number of them under the 'obvious error' provisions. From the evidence we have seen, RPA do not know exactly how many claims they paid in this way. Guidance to staff, issued in September 2005, asked them to use an 'obvious error spreadsheet' (already sent to staff) to record possible cases of 'obvious error'. Further guidance went to staff in September and October 2005.

<sup>161</sup> Earlier reports have described how RPA's problems with SPS meant that they were unable to make the bulk of SPS payments to farmers by the end of March 2006 as they had said they would. Defra and RPA revealed the scale of the problems in March 2006, when the Secretary of State replaced the RPA Chief Executive. A National Audit Office report on RPA, published in October 2006,<sup>37</sup> reviewed RPA's implementation of SPS. It said:

*'Implementation has not provided value for money because the project has cost more than anticipated and is not fully implemented as scoped, planned efficiency*

*savings will not be achieved, relations with the Agency's customer base have been damaged and there is a risk of substantial disallowance of expenditure by the European Union.'*

Also in October 2006, the then Permanent Secretary of Defra gave evidence to the House of Commons Public Accounts Committee. A member of the Committee asked her: 'Was the Rural Payments Agency unfit for purpose between May 2004 and March 2006?'. She replied: 'Subsequent events suggest that it was.'<sup>38</sup>

### RPA's workload kept growing

<sup>162</sup> The evidence we have gathered shows RPA were struggling to manage the volume of work connected with SPS claims in 2005 and 2006. That was work from the claims themselves and from correspondence about SPS claims. In 2006 RPA had a standard letter for 2005 SPS claimants who queried the progress of their payments. It asked them not to contact RPA for further information as RPA were 'striving to make payments on all claims, including yours, as quickly as possible'. RPA's processing problems meant they had only just made partial payments for SPS 2005 claims by mid-May 2006 – the usual timing of the SPS claim deadline. They extended the deadline for SPS 2006 claims to June 2006. In August 2006 RPA's operational management team noted that RPA had a backlog of over 40,000 pieces of correspondence and over 10,000 appeals and representations.

<sup>37</sup> Paragraph 3, *The Delays in Administering the 2005 Single Payment Scheme in England*, report by the Comptroller and Auditor General, October 2006.

<sup>38</sup> Q68 of written evidence, *The Delays in Administering the 2005 Single Payment Scheme in England*, House of Commons Committee of Public Accounts, July 2007.

<sup>163</sup> As I have described, RPA were giving staff frequent updates on how to deal with problems in claims. However, in practice, RPA were inconsistent in their approach to farmers who had made mistakes on their SPS claim forms. We asked RPA about this. They told us that they had *'stretched'* the 'obvious error' provisions. They also said that individual business units and managers were encouraged to use their initiative to pay people. RPA said that that might well have led to an inconsistent approach. This is played out in what some of our complainants have told us. For example, Mrs A, Mr G and Mr B's agent, Mr J, all mentioned other claimants they knew who had made the same or similar mistakes when completing their SPS claim forms. RPA had paid these other claims.

### The 11,000 non-activation claims

<sup>164</sup> By August 2006 RPA were on their third chief executive of the year. Cases where claimants had omitted to activate their entitlements continued to dog RPA throughout the difficulties of 2005 and 2006. In early August 2006 they issued fresh guidance to staff about the latest area of possible 'obvious error'. Later that month, the RPA policy director briefed RPA's operational management team on the problem. He told them that in 11,331 SPS 2005 claims applicants had not activated all or some of their entitlements. (RPA had received 116,000 SPS claims.) He said RPA had dismissed the argument for 'obvious error' in these cases because the forms were internally consistent. *'Misunderstanding scheme rules is not the basis for obvious error'* said RPA's note of his briefing. In October 2006 RPA's operational management team discussed a paper from the policy director

about how RPA might deal with these claims for SPS 2005. It became known as the paper on misunderstandings. The paper aimed to answer two questions. Could RPA consider the cases on a blanket basis? And could they pay the claims *'outside the "obvious error" guidance/principles and the amendment rules'*?

<sup>165</sup> The misunderstandings paper gave three options in response to these questions, as summarised by RPA's records of the meeting. They were:

- continue to deal with representations and appeals and take no further action;
- have a blanket acceptance of all the non-activation cases – this would carry a high risk that the European Commission would take disallowance action (see my explanation of disallowance in the glossary); or
- use RPA's 'obvious error' guidance to *'take a judgement on individual cases where we believe the customer deserves a payment due to an error/misunderstanding'* – this would limit any disallowance to those cases, but would need many staff and could lead RPA's stakeholders to press RPA to allow more cases.

<sup>166</sup> The recommendation in the misunderstandings paper, again as summarised by RPA's notes, was that RPA should use the 'obvious error' guidance and in each case decide whether the customer deserved a payment because of an error or misunderstanding.<sup>39</sup> The paper did not consider whether maladministration had contributed to the misunderstandings and did not mention an ex gratia payment solution.

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<sup>39</sup> After the discussion, RPA referred to the paper as the *'paper on possible acceptance of representations based on a misunderstanding'* and the cases as the *'misunderstandings cases'*.

<sup>167</sup> In October 2006 the operational management team estimated that it would take at least three weeks to review the non-activation cases. They said that they could not afford to take this time away from processing current claims. (RPA had only just switched their processing priority from clearing old 2005 claims to handling the 2006 SPS claims.)

<sup>168</sup> After the meeting, RPA's operations director noted that the operational management team had agreed with his proposal that RPA should first, hold a firm line and not review individual cases, and secondly, check the number of representations and appeals that resulted from this decision. He also named managers who would look into the position on partial activation for SPS 2006 and SPS 2007.

<sup>169</sup> Senior RPA officers continued to have concerns about the approach decided in October 2006. In December 2006 the acting head of RPA's legal team emailed the policy director. She said:

*'The main point that is haunting us (particularly [the Interim Chief Executive]) is the recurrent question of "Why would a farmer have signed [an SPS claim form] if he did not intend to establish/activate entitlements?'"*

She suggested a fundamental reappraisal of RPA's approach on these claims. The policy director replied: *'The reappraisal you suggest would cause us huge difficulties'*. He agreed to raise the matter, but we have seen no evidence of what happened after that email exchange. We do know that RPA continued to refuse to pay the claims for the farmers in

this investigation who failed to activate their entitlements.

<sup>170</sup> RPA have said that the EU Regulations covering SPS leave little room for RPA to vary the rules to pay claims where farmers have made mistakes in their claims. Their position was, and is, that they may pay claims only if the particular circumstances meet conditions which, in the light of rulings by the courts, must be strictly applied. The courts have confirmed RPA's interpretation of the Regulations in this area.<sup>40</sup>

<sup>171</sup> The evidence from RPA's operational management team discussions in August to October 2006 suggests that RPA believed in 2006 that they did have scope to make payments of SPS on some problem claims, albeit with a risk of disallowance, and that this would not require ex gratia payments. Their main tests in deciding whether or not to pay such problem claims within the normal course of SPS claims handling were: how much RPA could manage the risk of disallowance; and whether they had the resources to do the work needed.

### Complaints versus appeals

<sup>172</sup> RPA had a complaints process, which their customer relations team oversaw. They also have (and had) guidance on ex gratia payments that give them the scope to provide a remedy where it is impossible to remedy an injustice within the terms of the SPS regulations. RPA sometimes call this a remedy *'outside the rules'*.

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<sup>40</sup>For example, the Northern Ireland Court of Appeal decision on *McAlinden and Hennity*, December 2009 confirmed the strict interpretation of the 'obvious error' provisions. See paragraph 92 in the section *'Correcting mistakes – what the legislation said about obvious error'* in chapter two of this report.



173 In 2006 RPA decided to use the appeal route, not the complaints process, for cases where people told them they had not activated their entitlements by mistake. The customer relations team managed the appeal route as well as the complaints process. Using the appeal route meant that RPA would consider each case on its merits. But the criteria for the appeal decision would be the Regulations.

174 By and large, representations from farmers that raised questions of possible maladministration, such as misdirection about the likelihood of payment or the quality of scheme guidance, did not fit RPA's appeal remit. In the cases under investigation here, such complaints went largely unaddressed. This was also true of cases where the farmer's complaint arose from something other than a failure to activate entitlements.

### RPA and anticipating the needs of disabled people

175 As I set out in the specific standard, government departments have legal duties to people with disabilities. In June 2004 RPA's guidance on assistance to claimants with disabilities was based on the view that all claimants were business people and should be expected to take responsibility for looking after their claims.

176 The guidance we have seen said:

*'Our customers are in business and therefore it is for them to seek assistance for themselves. There may be costs for the applicant. In no circumstances can RPA be held liable for completing forms but in instances where someone had no other option than to assist it would be necessary to have in place a disclaimer against the action and [for it to be] fully recorded why this was done.'*

The guidance said it was primarily up to operations managers to decide what *'realistically can be achieved within time and costs constraints'* and added:

*'... there are no existing budgets available to undertake the additional assistance the claimant with disabilities may request unless there are sufficient printing type budgets on each site.'*

It gave the equal opportunities team and the chief executive's office as sources of advice for staff.

177 Also in June 2004 RPA officials exchanged emails about what adjustments they should make for the needs of people with disabilities or with particular communication needs. The papers we have seen show that they decided to include a general statement:

*'Customers with special needs – we are committed to providing consistently high quality services that are valued by our customers. If you have any difficulties in accessing information from us, please contact your relevant RPA office.'*

They also decided to provide a Minicom number for people who were hard of hearing.

### Conclusion

178 In chapter three, I have set out the key facts drawn from my review of the evidence we have gathered. In chapter four I tell the stories of the nine complainants.

# Chapter four

## The complainants' stories in summary

### Introduction

179 In chapter four, I tell the stories of the nine complainants. I have used the evidence provided by the complainants and by RPA to give as complete a picture of what happened as possible.

### Mrs A: a summary of her story

#### About Mrs A

180 In 2005 Mrs A owned about 33.5 hectares (86 acres) of land in the South West of England. She was a livestock farmer. She has told us she kept her land, but sold the bulk of her stock in 2008 because the paperwork and hassle had become too much. Her last eight cattle will go in autumn 2011. Mrs A has told us that, before SPS, she had taken her claim forms to RPA's Exeter office every year, where someone would go through them. That checking service was not available for 2005, although it was still possible to hand-deliver the form. Mrs A has said she believed that RPA would contact claimants if necessary.

#### The 2005 claim

181 In May 2005, in time for the deadline, RPA received Mrs A's 2005 SPS claim. She had completed the correct boxes to establish her entitlements but she had not activated them. She had said no to the question about activating entitlements; and she had made no entry in column J (for activation) of the field

data sheets of the claim. Making no entry in column J meant she would receive no payment for 2005. Also in May 2005 RPA completed the Level 0 validation (see glossary) of the claim. On 15 June 2005 they completed a further checklist when they keyed in her application.

182 Eight months later, in February 2006, RPA sent Mrs A her definitive entitlement statement. It said her entitlements were worth €20,351.27 (£13,879<sup>41</sup>) for 2005.

#### Mrs A's representations to RPA from March 2006

183 In March 2006 RPA paid Mrs A £5,141.85 for the 2005 SPS. She asked them to explain the amount and in April 2006 an agent acting for her told RPA she would like RPA to amend her forms and pay her in full for 2005. Early in May 2006 the same agent made the same request for Mrs A's partner, Mr Z.

184 The next contact was in September 2006. RPA sent Mrs A a further payment of £96.65 for the 2005 SPS. This was her modulation refund.<sup>42</sup> In total RPA sent her £5,238.50 in error for 2005.

#### RPA's internal debate about the claim – from September to November 2006

185 At the end of September 2006 RPA's Exeter office referred Mrs A's case for further consideration. They recommended that RPA adjusted their records to activate all her entitlements because Mrs A had '*made a genuine mistake*'. They said she had believed that establishing entitlements for payment

<sup>41</sup> Her 2005 entitlement statement put her entitlements at €20,351.27. The 2005 SPS euro conversion rate was €1 = £0.68195.

<sup>42</sup> A proportion of SPS payments is deducted to fund other agricultural and environmental support. Farmers then receive a partial refund of this 'modulation' deduction.

meant that she was requesting payment, and that many other applicants had made a similar mistake.

186 At the end of October 2006 the agent contacted RPA again. He said that RPA had paid Mr Z and he asked RPA to revisit Mrs A's claim.

187 In November 2006, RPA's policy team rejected the recommendation made by the Exeter office. They said RPA could not offer anything in Mrs A's case without creating a precedent and she had given no indication on the form that she wanted to activate her entitlements. They said that RPA should consider recovering Mr Z's payment. Later in November 2006 RPA wrote to the agent and Mrs A with their decision. They said Mrs A could appeal. They also explained that a keying error by RPA had resulted in four of Mrs A's entitlements being activated and that was why she had incorrectly received a payment. They said RPA would recover the overpayment and they told the Agency Mr Z should not have had any 2005 payment either.

### **Mrs A's appeal about her claim – Stage 1**

188 In January 2007 the agent wrote to RPA about Mrs A's appeal. In summary, he argued that the Handbook said that RPA had the discretion to permit payment, because they could accept honest mistakes, and that Mrs A's errors in failing to complete the form correctly were manifestly obvious. He referred again to Mr Z's case and he said that Mrs A's cousin, Mr W, had made the same mistake but had been contacted by RPA and allowed to correct his form. In May 2007 the agent had to resubmit the appeal. RPA had received his letter, but they had no record of receiving an appeal form.

### **RPA ask for their money back**

189 In August 2007 RPA sent Mrs A an invoice for the £5,238.50 she had received in error. (Mrs A has told us she received no further contact from RPA about the overpayment. They deducted it from a later SPS year's payment.)

190 In October 2007 RPA refused Mrs A's Stage 1 appeal. They said that the way she had completed her form was consistent with an applicant who wanted to establish entitlement, but did not want to activate entitlements for 2005. The agent disputed their decision. He told them that RPA had been encouraging agents (the agent had not acted for Mrs A on her claim, but on her appeal) just to get the forms in and had told them that RPA would sort out any mistakes later. In commenting on the draft report, Defra and RPA said that they believe the agent was referring to RPA's stance on mapping issues, not on claims generally. But that is not what the evidence we have seen suggests. In December 2007 the agent sent RPA the grounds for Mrs A's Stage 2 appeal. In February 2008 the Minister, following a recommendation by RPA's appeal panel, rejected the Stage 2 appeal. RPA said that Mrs A could challenge the Minister's decision by judicial review or she could complain to this Office, through her MP, if she thought there had been maladministration. The Member took up Mrs A's case and then referred the complaint to me in September 2009.

### **Mrs A's evidence of RPA's inconsistent decision making**

191 Mrs A has said that her partner (Mr Z) and her cousin (Mr W) each made the same mistake in their 2005 SPS claims as she did. That is, they established entitlements but omitted to

say that they wanted to activate them. They asked RPA to activate their entitlements only after they received no payment for 2005. The difference between their cases and Mrs A's case was that RPA accepted their representations and paid their claims, but declined to pay Mrs A's claim.

<sup>192</sup> The evidence in RPA's files has confirmed that Mrs A's mistake was the same mistake that Mr Z made. In November 2006 an officer in RPA's policy team said that she had looked at Mr Z's case and that he had made the same errors as Mrs A. She said she could not understand why his claim had been paid. We have seen insufficient evidence to be able to determine for ourselves whether or not Mrs A's cousin made exactly the same mistake in his 2005 SPS claim as she and Mr Z had made.

### **Mrs A's description of the effect on her of losing the 2005 payment**

<sup>193</sup> We asked Mrs A how losing her 2005 SPS payment affected her. She has said her farm had a small acreage and turnover. It did not make a profit, but as long as they could live, they were happy. She responded to the loss by cutting back the number of cattle she kept and being very careful about what she spent. Also, for four years she had no way of paying her partner rent for the land she rented from him. Mrs A has also told us that her impression of that time was that RPA never returned telephone calls and seemed not to understand that, as a farmer, she was out at all hours and in all weather. She said she *'just worried and worried and worried'*.

### **Some comments from Mrs A on a draft of this report**

<sup>194</sup> We shared a draft of this report with Mrs A. She told us that she had lost confidence in filling in any forms from RPA and now always used an agent. She also said:

*'The hassle and stress have resulted in my being prescribed both anxiety tablets and anti-depressants, although I am beginning to cope far better again, but for two years my life stood still.'*

## Mr B: a summary of his story

### About Mr B

<sup>195</sup> Mr B's 2005 SPS claim covered 97 hectares (240 acres). He is an arable farmer in the East of England, with no livestock. Mr J has been Mr B's agent since about 1995.

<sup>196</sup> Mr B is a tenant of the county council, which means he is not permitted to sub-let his land. However, there is a long-standing practice in that part of the country for specialist pea contractors to grow peas on farmers' land for freezing. If the peas are unsuitable for freezing, the farmer keeps the crop.

<sup>197</sup> The start of subsidies for fruit, vegetable and potato crops (FVPs) was the complicating factor for farmers in Mr B's position. Issues about dual claims for subsidy on these crops had not arisen before 2005. That was partly because no subsidy had been payable on peas and partly because 2005 was the first year of linking subsidy to land holding instead of production. Under the IACS scheme claims the land had always been under Mr B's name, as it met the criteria for being under his control at the key date. (The FVP scheme no longer exists.)

<sup>198</sup> An NFU *Information and Analysis* paper issued on 10 July 2006 said: *'The introduction of SPS has not been a happy experience for FVP growers and those farmers who provide them with land under short term arrangements.'* The paper went on to explain that farmers and specialist growers often had informal arrangements about land. In 2005 specialist growers who had not received direct subsidy in the past ended up claiming SPS. If the specialist growers had not claimed, there had been a risk that the industry would lose financially because they had failed to establish entitlements. The

paper noted that farmer claimants needed to ensure they had enough management control to fulfil the rule of having the land at their disposal for 10 months. It described the FVP regime as almost unworkable.

### The 2005 SPS claim

<sup>199</sup> On 12 May 2005 Mr J wrote to RPA. The letter was headed [Mr B] – SBI [...] and Mr J handed it in with the form. But he delivered it as a general query, not a covering letter. His letter said:

*'I was surprised and disappointed to find that this year, staff have been instructed to give no help or advice on any query even though this is the first year of the new regime and with ever more complex forms – other than to check for signature and tippex!'*

In commenting on the draft report, RPA have told us that they offered the same basic level of check as in previous years. This is not what the evidence from the complainants suggests. Mr J's letter also said:

*'I am concerned that three applications I handed in may have unintentional errors as I am unsure of the need to activate entitlements for fields let for an annual crop, but which may be retained by the grower if not fit for the purpose for which it was grown. The FVP [fruit, vegetable and potatoes entitlement] being claimed by the hirer [sic]. I had taken some thirty forms to the office at the same time and they were split up between three clerks for stamping at three separate desks and I did not ask for my query to be appended. I raised my queries and was told that anomalies would result in the return of the form for correction as in previous years and trust this will be so.'*

RPA have said that they have no record of receiving Mr J's letter. He has said that, if they had replied, he would have updated Mr B about the correct situation.

<sup>200</sup> On 13 May 2005 Mr B's claim, which was signed by Mr B, passed RPA's *Level 0 validation* checklist. The checklist noted the agent's authorisation.

<sup>201</sup> Mr B and Mr J have said that after Mr J had submitted Mr B's claim, the pea contractor spoke to Mr B. He and the pea contractor agreed that for 2005 the pea contractor would claim the fruit, vegetables and potato subsidy for his pea crops on Mr B's land. Neither of them contacted RPA or Mr J about this changed arrangement. Mr J later told RPA<sup>43</sup> that Mr B had believed it did not matter, since he had not claimed fruit, vegetables and potato authorisations for those fields.

### **RPA identify the dual claim – November 2005**

<sup>202</sup> On 8 November 2005 an RPA caseworker noted that the pea contractor and Mr B had claimed for the same land. RPA wrote to both of them about the dual claim on three land parcels. We have not seen a record of any letter being issued to Mr J, but he replied to RPA on 24 November 2005 and explained matters – Mr B's claim for the fields had been a mistake. The papers show the involvement of other caseworkers between November 2005 and June 2006. In January 2006 RPA identified a fourth land parcel claimed by both the pea contractor and Mr B.

### **Mr B asks why he has received just 1p**

<sup>203</sup> In July 2006 Mr B called RPA to ask why he was receiving only 1p for his SPS claim, with the other £6,000 taken off in penalties. Mr J also took up the matter. He and Mr B stayed in touch with RPA, seeking an explanation. On 22 September 2006 RPA wrote to Mr B. They said they had reviewed his claim and decided they needed to adjust their records. They said they would contact him again when they had adjusted it, but asked him not to contact them for further information as they were *'striving to make payments on all claims, including yours, as quickly as possible'*. There was further contact in November 2006 and in spring 2007.

### **RPA explain, remove the penalty, then put it back – April to July 2007**

<sup>204</sup> In April 2007 RPA explained matters to Mr J. RPA's records show that they said the penalty seemed to have been applied because four parcels of land had been claimed in 2005 by Mr B and by the pea contractor; that Mr B's written request for withdrawal of the first three parcels was made in a letter dated 24 November 2005, replying to RPA's letter of 8 November 2005; that his request for withdrawal of the fourth parcel was made in a letter dated 5 November 2006 in response to a telephone call from RPA; and that it seemed penalties had been applied because the requests had been made after RPA had drawn Mr B's attention to a problem or anomaly. On 8 May 2007 Mr J wrote to RPA. He said:

*'It was in 2005, when Mr B was growing peas with [the pea contractor] that he was approached and it was suggested that, provided he had sufficient fvp's for his own*

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<sup>43</sup>In his letter to them of 24 November 2005.

*needs, it would help [the pea contractor] if the peas could be treated as his. Mr B agreed and some fields with peas were excluded from his application. Unfortunately, the list given to me was not identical to that discussed and this field – [...] was not included. The reason for this was partly due to this field number being originally mistyped by yourselves as [...] and the field was then amalgamated and renumbered as [...].'*

He said he had explained this in his letter of 5 November 2006, but had received no reply. He also said that in two similar instances RPA had corrected claims without penalty.

<sup>205</sup> In June 2007 RPA decided to remove the penalties, but a month later they decided they should stand. On 1 August 2007 RPA wrote to Mr J with a further explanation, confirming a telephone conversation. The letter said the penalties were still in place. Among other things, it said there should have been an RLE1 form<sup>44</sup> to enable the pea contractor to claim on Mr B's entitlements. The letter referred Mr J to section D9 of the SPS Handbook, which was about transferring and letting land. It said Mr J needed to appeal if he wished to dispute the decision.

### **The Stage 1 and Stage 2 appeals – August 2007**

<sup>206</sup> In August 2007 RPA received Mr B's Stage 1 appeal and in February 2008 they upheld their decision to apply penalties on all but one of the four fields covered by the dual claim. In March 2008 Mr J submitted a Stage 2 appeal. In May 2008 the appeal panel upheld the decision to apply penalties. But they also commented

that the lack of adequate communication from RPA had put unnecessary stress on Mr B and that RPA should review the disproportionate effect of financial penalties on smaller applicants. In June 2008 the Minister accepted the panel's recommendation. The Minister's office also asked what had been done about the panel's statement about reviewing the disproportionate effect of financial penalties on smaller applicants. The response, obtained from a member of the RPA policy team, was:

*'It would require an amendment to the EC Regulation which specifies the level of penalties to be applied. Although we can channel this request through Defra, it is not very likely that it would be achieved as it would require the Commission to agree in principle and would also require the agreement of all other member states. Although I understand the feeling that small claimants are potentially penalised more, ie in that if the small producer makes only 1 mistake on his application the fallout is likely to be higher, but the same principles are applied to all claimants. It is the extent of the mistake that determines the penalties rather than how many errors were made.'*

### **The attempt to go to court**

<sup>207</sup> In August 2008 Mr J told RPA he planned to apply for judicial review. RPA gave him no detailed response and in September 2008 he submitted a judicial review application. RPA's lawyers apologised for the lack of an earlier detailed response and set out their reasons for refusing Mr B's claim. They offered to pay his costs if he withdrew his claim. In November 2008 Mr J told RPA that their solicitor had said the case might have been better dealt

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<sup>44</sup>The RLE1 form is used to tell RPA about entitlement or land transfers. It replaced the IACS 22 form.

with by the Ombudsman. He said he was making a final submission so that RPA could reconsider the case. He gave five examples of mistakes he had seen RPA correct without penalty. In December 2008 the High Court refused permission for an application for judicial review. The judgment said:

*‘... the documents do not demonstrate any error of law or irrationality on the part of either the RPA, or its appeal panel, or the Minister, or Defra ... The Panel’s acknowledgment that financial penalties affect smaller applicants disproportionately does not indicate any reviewable error of law. At most it indicates the view of the Panel that the law, when correctly applied, may bear more harshly on smaller applicants.’*

<sup>208</sup> In January 2009 RPA replied to Mr J’s November 2008 letter. They said nothing of substance in answer to the nine points he had raised. The Member referred the complaint to the Ombudsman in February 2009.

### **Mr J’s evidence of RPA’s inconsistent decision making**

<sup>209</sup> Mr J, in his November 2008 representations to RPA about Mr B’s dual claim, told them about five cases that he believed were comparable with Mr B’s. His understanding was that RPA had taken a more lenient approach in those cases than they had with Mr B. RPA offered no explanation for Mr J’s examples of apparent inconsistency. They invited him to give them more details and said that if they found the rules had been applied incorrectly, they might have to consider recovering those incorrect payments.

### **Mr B’s description of the effect on him of losing the 2005 payment**

<sup>210</sup> Mr B has told us that the problem for him was being accused unfairly of fraud – that was how the penalty issue had felt to him. He found it difficult that each time he called RPA, he was passed around to three or four people, none of whom knew what was going on. He has also said that there were times when RPA failed to return telephone calls. He said that he was lucky to have been in credit at the bank and that the bank had been willing to lend to him. His penalty affected only his 2005 SPS payment.

### **Some comments from Mr B on a draft of this report**

<sup>211</sup> We shared a draft of this report with Mr B and his representative. His representative said that he was disappointed with the conclusions we had reached, but he accepted our reasoning. However, he said that he believed that the circumstances of Mr B’s complaint would justify a larger payment to him than the £1,000 I had recommended, closer to the £6,000 loss he had suffered.



## Mr C: a summary of his story

### About Mr C

<sup>212</sup> Mr C is a tenant farmer in the South West of England with about 40 hectares (about 98 acres) of land. He is a beef farmer, although he had a dairy herd until 2004. Mr C is completely deaf in one ear and partially deaf in the other. He has told us that, generally, he prefers written communication and that, after he speaks to RPA, he tends to confirm conversations by letter. He used an agent to handle his subsidy claims before SPS and in 2005 a Forest Friendly Farming adviser helped him with his claim.<sup>45</sup> Mr C would have received about £9,128<sup>46</sup> in total from SPS in 2006 if he had activated all his entitlements as he had intended. Mr C is 76. Two of my investigators have met Mr C and his representative. In the meeting Mr C had a full grasp of the facts of his case, but it was clear that he had difficulty hearing what the investigators said. His handwriting on the official forms and letters that we have seen can look unsteady.

<sup>213</sup> Mr C has told us that he told RPA that he was deaf *'time and time again'*. He has said that he attended one of RPA's meetings for farmers, but was unable to hear the information given. He also told us that it would have been easier for him if he had had to deal with one person *'instead of 25'*. The papers we have seen show that, from time to time, RPA officers did consider the welfare and stress issues raised by Mr C and people writing on his behalf. We have seen no evidence that RPA attempted to have any face-to-face meetings with Mr C and

his representatives. At least three times – in November 2006 and twice in January 2007 – Mr C and his farming adviser asked RPA to give Mr C one person to deal with his case. In one of the January 2007 letters the farming adviser made it clear that Mr C was deaf. But he and his advisers still had to deal with a range of people.

### The 2005 SPS claim

<sup>214</sup> Mr C made a successful 2005 SPS claim. However, in March 2006 he found that RPA were using the wrong bank account details and two payments went to an account held by a bank he had left. He telephoned them. One payment, for £575.50, was from an environmental stewardship scheme<sup>47</sup> and has been retained since 2006 by his old bank. Mr C first complained about this in March 2006. RPA then made the first payment of his 2005 SPS claim into the same, old account. They recovered that payment and re-made it, correctly, at the end of July 2006. RPA apologised, but they gave him differing accounts of what happened. They also disputed Mr C's view of their level of responsibility for the costs he incurred and for recovering the payment retained by the bank. RPA have said the bank netted off the payment against an overdraft. At the end of November 2006 RPA decided to pay Mr C £50 by way of apology, but lost the paperwork. They made the payment in February 2007.

<sup>215</sup> Mr C has also been in contact with RPA since 2006 about changes to the land area they had used to calculate his SPS claims, particularly their treatment of his common land rights.

<sup>45</sup> Forest Friendly Farming is a group set up to support farming, commoning and woodland management in the New Forest.

<sup>46</sup> Mr C's 2006 SPS entitlement statement gave the value of his entitlements as €13,468.92. The euro conversion rate for SPS 2006 was €1 = £0.67770.

<sup>47</sup> Entry Level Stewardship is one of the Environmental Stewardship subsidy schemes. The Rural Development Service, now part of Natural England, administered these, using mapping data provided by RPA's Rural Land Register. RPA apply controls as necessary, including inspections, and make the payments for these schemes.

## The 2006 SPS claim

- <sup>216</sup> Mr C's farming adviser was away when he made the 2006 SPS claim and Mr C looked after the claim on his own. On 4 May 2006 RPA received Mr C's 2006 SPS claim form. Mr C had completed column C10 to activate his entitlements for only one field parcel. He had added this line by hand. He had left the lines of pre-populated field data untouched. His covering letter said: *'On filling out this application you completely missed out field number ... which is recorded on your Rural Land Register Map'*. In his comments on a draft of this report, Mr C said that the small print on the form said there was no need to alter it unless land was missed out. (The 2006 form also asked claimants to correct any mistakes in the preprinted entries.)
- <sup>217</sup> On 5 May 2006 Mr C's 2006 SPS claim form passed RPA's *'Level 0 validation'* checks. The checklist asked if at least one line in the field data sheets had entries at parts C2, C4 and C8 or D1 and D2. One line was completed – enough for Mr C's form to pass the basic checks of RPA's initial validation process for part C of the claim form.
- <sup>218</sup> The 2006 SPS claim form, in part E, also asked claimants to use the information from their field data sheets (part C) to tell them which entitlements they were *'activating for payment'* in 2006. There was no preprinted entitlement information in part E of Mr C's claim form and he made no entries, either of individual entitlements or to complete the *'activate all'* box on the form. We asked RPA about how they handled claims where part E was blank. They told us that Mr C's form failed the checks for part E of the claim and their guidance at the time was to send an 'SPV1' letter asking for the missing information. They told us they could find no record of writing to Mr C and that it seemed no action was taken on the blank part E. In principle, the lack of an entry in part E did not disadvantage Mr C. That was because RPA decided to base 2006 scheme payments on the land area activated in part C of the application form even if that was not supported by the entries in part E. RPA also said that, even if Mr C had completed the blank part E after receiving an SPV1 letter, they would only have paid him for the entitlements he had activated in part C.
- <sup>219</sup> In September 2006 RPA telephoned Mr C about the 2006 land use coding in his 2006 claim. (None of the preprinted fields had a 2006 land use code as Mr C had not completed any of those lines.) RPA's note of the call said that Mr C confirmed that the land use code for 2006 should be as the 2003 land use code. RPA amended his claim accordingly. Mr C has told us that, in that call with RPA, he had told them that everything on his 2006 form should be the same as his 2005 form. On the same day RPA wrote to Mr C to confirm their telephone conversation. They did not mention the other missing information. Mr C replied, clarifying the information about his land use.
- <sup>220</sup> Mr C contacted RPA three times in February 2007 about his payment and his other concerns. In March 2007 RPA told Mr C that he had activated only one field, which was why his payment had been less than he expected. The Member intervened on his behalf. At the end of March 2007 RPA decided that there had been no 'obvious error' in Mr C's case because there was no inconsistency within the claim form which would suggest any intention to activate entitlements. In March, April and May 2007 RPA looked again at Mr C's case in response to requests from him and from others, including

the Member. In May 2007 RPA noted that it was difficult to communicate with Mr C due to his hearing aid. RPA debated the decision internally, but at the end of May 2007 RPA told him they could not change his claim. Mr C's farming adviser and Farm Crisis Network, who took a hand in his case in late 2007, both told RPA they were concerned about the £100 cost to Mr C and the stress of going through an appeal. Also in June 2007, Mr C's family doctor provided a letter saying that Mr C had been suffering from gastritis since April 2006 and his symptoms seemed closely related to stress. Mr C's Stage 1 appeal, submitted in June 2007 and decided in October 2007, failed. In his appeal claim, Mr C said it was his understanding that the claim form had had a dark pre populated 'X' in the box for activation and it was his understanding that he did not have to write over it again, as it was already marked. His Stage 2 appeal, submitted in January 2008 and decided in March 2008, also failed.

- 221 On 1 May 2008 RPA wrote to Mr C in response to his letter of 8 April 2008. They said that they did not consider that RPA had discriminated against him as a disabled person through their handling of his appeal and they explained why.

### **An overpayment for SPS 2006**

- 222 On 10 June 2008 RPA asked Mr C to repay £225.76 which they said they had overpaid him for 2006 SPS claim. They wrote to him again about this on 19 August 2008. On the same day the Member referred the complaint to the Ombudsman. RPA looked into the overpayment at Mr C's request and on 2 September 2008 they told Mr C that the overpayment was correct and that he would have to repay it.

### **Other matters of concern for Mr C**

- 223 Mr C and RPA have had a third area of dispute, apart from the handling of his bank details and his 2006 SPS claim. This third issue was about RPA's treatment of Mr C's common land rights. In 2001 RPA had said the total area of the common where Mr C had rights was 104.872ha. For his SPS claims the total area changed to 79.23ha. Mr C has said that he cannot see how the common can have changed size in that way. In summer 2010 Mr C told us that he remained unconvinced by RPA's decision on his common land, the approach they took to his complaint about his bank account or their decision about the activation of his 2006 claim. He has also told us that, apart from the common land questions, he is also unconvinced by RPA's figures for the land covered by his 2005 SPS claim.

### **Mr C's description of the effect on him of receiving a reduced 2006 SPS payment**

- 224 We asked Mr C how his problems with the RPA had affected him. He made a joke about not having a nervous breakdown and explained he was just annoyed that RPA would not listen to anything he said. He said he wanted the money. He said that in 2007, when his SPS payment was less than expected, he had just had to manage on his overdraft. But his bank had been after him all the time. He has told us that in 2008 he sold his interest in some land in order to clear a loan and interest that had built up partly because RPA had not paid his 2006 SPS claim as expected. We noted that relatively small things had added to his frustration. For example, Mr C told us he had had to pay excess postage when RPA sent him the papers for his appeal and that he always used registered post for RPA now,

since they lost a recorded delivery letter (about milk quota).

### **Some comments from Mr C on a draft of this report**

225 We shared a draft of this report with Mr C and his representative. In commenting on the draft, he said:

*'I am a cheerful personality and try not to get depressed. But [this experience with RPA was difficult, what] with the loss of my ex wife Pauline and partner during July 2004 with leukaemia after 44 years, and the RPA attitude, [and] finance for the business is hard to find as I was not allowed my full entitlement under SPS.'*

226 Mr C has also said that he was disappointed that our recommendation for remedy stopped short of asking RPA to pay him the full amount of his SPS 2006 claim. He said that RPA had received his claim on 4 May 2006. The extended deadlines that year meant they had time to return his claim, he said. He also told us that he had told RPA several times about his deafness. Mr C and his representative have also told us that they believe RPA should have understood from their contact with Mr C in September and November 2006 that he had intended to activate the same entitlements for SPS 2006 as he had for SPS 2005.

## Mr D: a summary of his story

### About Mr D

227 In 2005 Mr D ran a small arable farm, of about 40 hectares (100 acres), in the East of England. He also did some contract farming work. His 2005 SPS claim would have come to about £8,094<sup>48</sup> if he had activated his entitlements as he intended. His wife ran a small toy business. Mr D is still farming, but his wife has closed her business.

228 Mr D has said that in 2005 he relied on the original guidance sent out by RPA when he completed the claim form, although he probably had received the supplementary guidance they issued in April 2005. He has said that he found the timescale tight. At the time, his father was dying.

229 Before SPS, Mr D has said, he took his forms into RPA and officials checked them for him. He has said that the first years of the IACS scheme had been confusing for people and officials had been very helpful then.

### The 2005 claim

230 In May 2005, in time for the deadline, RPA received Mr D's 2005 SPS claim. He had completed the correct boxes to establish entitlements but he had not activated them. He had said no to the question about activating entitlements; and he had made no entry in column J (for activation) of the field data sheets of the claim. Making no entry in column J meant he would receive no payment for 2005. Mr D has said that he had misunderstood the guidance on completing the claim form. His next contact from RPA was in February 2006

when they sent him his definitive entitlement statement (see glossary). It showed he had entitlements worth €11,869.60 (£8,094 at the 2005 SPS exchange rate).

231 RPA completed their Level 0 validation of Mr D's claim in May 2005 (see glossary) and a further checklist when they keyed in the claim in July 2005.

### Mr D's representations to RPA from April to October 2006

232 At the end of March 2006 RPA sent Mr D a payment statement. It showed a payment due of £1,356.56, but reduced to nil by penalties. Mr D has said that he has not received an explanation for the information on the payment statement, which should not have included any penalties. In April 2006 Mr D contacted RPA and asked if his mistake in not activating his entitlements could be corrected. RPA asked the RITA delivery expert (see glossary) for advice. Mr D telephoned or wrote to RPA three times in April to May 2006 and in May received a standard letter from RPA about their SPS payment problems. In May to June 2006 Mr D, or his wife, telephoned RPA four times. Mr D has said that RPA returned his calls. The problem was that no one in RPA could give him an answer.

233 At the end of June 2006 RPA wrote to Mr D. They said that he had omitted to complete column J on his claim. They said they were '*implementing an adjustment mechanism*' which would enable them to recalculate Mr D's entitlements and make any associated payments. They said they would contact him again if his claim was to be adjusted and they asked him not to contact them.

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<sup>48</sup>His 2005 entitlement statement put his entitlements at €11,869.60. The 2005 SPS euro conversion rate was €1 = £0.68195.

<sup>234</sup> In September 2006 Mr D asked RPA for an update. Later the same month the Member wrote to Lord Rooker, the Minister responsible for RPA, about Mr D's case. He said Mr D was: 'left completely in the dark about any future payments'. In early October 2006 the Minister replied to the Member. He said that RPA were unable to accept the errors on the claim form under the 'obvious error' provision and would be unable to make payment for the land that had been established, but not activated.

### **Mr D's appeal – Stage 1, from November 2006 to February 2007**

<sup>235</sup> In November 2006 RPA received Mr D's appeal against their decision not to make any payment for the 2005 Scheme. He said that he accepted that he had placed undue weight on paragraph 320 on page 86 of SPS Handbook (Annex B, paragraph B2), which said that you could not activate entitlements until they had been established. He said that he assumed activation would follow establishment.

<sup>236</sup> In February 2007 an RPA lawyer told the officer considering Mr D's appeal that there was no legal basis to use the 'obvious error' or 'force majeure' provisions to pay the claim. Later that month RPA sent Mr D the Stage 1 appeal decision, which upheld the decision not to pay him.

### **Mr D's appeal – Stage 2, from March 2007 to July 2007**

<sup>237</sup> In March 2007 Mr D submitted his Stage 2 appeal. He said that the Stage 1 decision appeared to be based around 'obvious error' or 'force majeure' and that was not his argument. He said that the information he had received

from RPA in 2006 had led him to believe that his mistake could, and would, be rectified.

<sup>238</sup> In July 2007, after an RPA appeal panel had considered the case and recommended rejecting the appeal, RPA wrote to Mr D saying that the Minister had rejected his appeal. On 6 May 2008 the Member referred the complaint to the Ombudsman.

### **Mr D's description of the effect on him of losing the 2005 payment**

<sup>239</sup> Mr D has told us that for 2005 his farm accounts showed a current account credit balance of £4,000. In 2006 there was an overdraft of £8,000 and in 2007 it was £5,500. He gradually increased his overdraft facility, which peaked at £13,000. He has said:

*'If I had known at the beginning of this shambles (April 2006) that I definitely would not be paid, I could have planned a more structured way of overcoming our financial problems, instead of constantly playing catch up with overdrafts. I would have been pretty annoyed, but I do think that we could have avoided some of the things that happened which cannot now be reversed.'*

He has talked about the impact on his wife's toy business (which without his cash support, closed after 19 years' trading); about having to sell land; about cutting household costs, including family holidays; about cutting investment in machinery and maintenance of the family home; and about losing confidence in his ability to complete the forms – he now pays an agent £300 a year. He has said his wife feared the worst and became very depressed. Mr D's letter, setting out the effect on him, the

business and his family, is in an annex to this report.

### **Some comments from Mr D on a draft of this report**

<sup>240</sup> We shared a draft of this report with Mr D and his representative. Mr D's representative told us that Mr D felt that justice had been done and he would like the Ombudsman to *'know that this piece of work had restored his faith in our democracy'*. The representative said: *'[Mr D's] family have really struggled at times over the last five years, and the recommended payments will go a long way towards getting their lives back to normal'*.

## Mr and Mrs E: a summary of their story

### About Mr and Mrs E

<sup>241</sup> Mr and Mrs E were sheep farmers in 2005. They run a flock of about 600 ewes in the East of England on land held on grazing agreements. Their 2005 SPS claim would have been worth about £5,355<sup>49</sup> if they had activated their entitlements as they had intended.

<sup>242</sup> Mrs E has said that in May 2005 she had not understood what RPA meant by '*a forage area obligation*', for example, in their guidance about claiming SPS. She has said that she and her husband could not afford to use an agent to look after their paperwork. However, someone in RPA's Cambridge office had always been able to answer their queries. That service was no longer available in 2005. Mrs E has also said that in early 2005 she was receiving chemotherapy treatment for cancer.

### The 2005 SPS claim

<sup>243</sup> Mrs E remembers having second thoughts when she filled in her 2005 SPS claim and ticked the box for activation. She called the RPA helpline. They told her that she needed at least 0.1ha of land to activate her entitlements. RPA later told Mrs E they had no record of her telephone call. But we have seen a note made by RPA in which they said she called for fresh forms, including a business registration form. Mrs E was already registered with RPA. She has said that she did not ask for or receive a fresh set of forms.

### RPA's handling of the claim from May 2005 to October 2006

<sup>244</sup> RPA received Mrs E's 2005 claim form on 12 May 2005, signed on 9 May 2005, before

the claim deadline. The claim form showed that Mrs E had originally marked 'yes' to the question about activating her '*entitlements subject to special conditions*', but had amended the form to 'no'. The next day the claim passed RPA's Level 0 validation check (see glossary on validation).

<sup>245</sup> In February 2006 RPA sent Mr and Mrs E a non-validated entitlement statement showing a total value of €7,852.63 (£5,355). In March 2006 RPA carried out a further check of the 2005 claim. They noted that they had not received an SP16 form with details of livestock and that Mr and Mrs E had said they did not want to activate special entitlements. RPA wrote to Mr and Mrs E saying they could not activate their entitlements without the information from an SP16 form. The SPS claim form and Handbook did not mention this form, but a leaflet enclosed with farmers' entitlement statements said that farmers who had established special entitlements '*should have already received from the RPA form SP16*'.

<sup>246</sup> In April 2006 RPA sent Mr and Mrs E a definitive entitlement statement. This too showed entitlements amounting to €7,852.63 (£5,355) for the 2005 Scheme year. Mrs E sent RPA a completed SP16 form, obtained from the NFU. She said she hoped that the information she had supplied would be sufficient to activate her claim. She said that she had contacted RPA on 28 March 2006 and on 3 April 2006 requesting the SP16 form, but it had not arrived.

<sup>247</sup> In May 2006 RPA returned Mr and Mrs E's 2006 Scheme claim, because they had not provided any field data or activated their special entitlements. (In commenting on the draft report, Defra and RPA said:

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<sup>49</sup>Their 2005 entitlement statement put their entitlements at €7,852.63. The 2005 SPS euro conversion rate was €1 = £0.68195.



*'The letter is a standard letter sent to all applicants who have failed to enter sufficient detail on to their form meaning it cannot be validated. The letter was not advising with regard to an obvious error, it simply advised that the form could not be processed as it did not contain sufficient information.'*)

Mr and Mrs E corrected their form and returned it. (RPA wrote to them in June 2006 about the conditions required for activation in 2006; telephoned them in November 2006 to confirm they wanted to activate the entitlements for 2006; and checked that again in February 2007.)

<sup>248</sup> In October 2006 RPA told Mr and Mrs E that they could not pay them for 2005 because they had not activated their entitlements. Also in October 2006 Mrs E complained to RPA about how the helpline had misled her in a telephone call in early May 2005 and asked them to look into her case. In December 2006 RPA confirmed that they would not pay the SPS claim for 2005.

### **Mr and Mrs E's Stage 1 appeal – January to April 2007**

<sup>249</sup> In January 2007 Mr and Mrs E made their Stage 1 appeal. In that, Mrs E said that she had found the 2005 Handbook guidance on special entitlements to be *'incomprehensible'*. In April 2007 an RPA lawyer commented on RPA's draft decision. She ruled out allowing the claim within the Regulations. She also said that the administrative error (of suggesting in March 2006 that but for a missing form, RPA would have activated their entitlements) did not amount to maladministration. However, she also said that RPA might want to consider the claims that the Handbook advice was confusing and that the customer helpline's advice was poor. She referred to previous criticism of the

helpline. She gave no direct advice on how RPA might take those claims into account. The same month RPA sent Mr and Mrs E the Stage 1 appeal recommendation, rejecting the appeal because there was no scope to allow it within the 'obvious error' Regulations. RPA also explained that they had no record of a telephone call with Mrs E in May 2005 and so had no way of knowing what was discussed during the call or what advice was given.

### **Mr and Mrs E's Stage 2 appeal – June 2007 to April 2008**

<sup>250</sup> In June 2007 RPA received Mr and Mrs E's Stage 2 appeal. Mrs E had taken legal advice about the appeal, thanks to an NFU grant of £250. Among other things, she said that the wrong and misleading advice Mrs E received should constitute exceptional circumstances, which would entitle her to have the claim reconsidered, because RPA had a duty to provide proper guidance and customers were entitled to rely on that advice. She also sent RPA a copy of her telephone records showing her call to them in May 2005.

<sup>251</sup> In March 2008 an RPA appeal panel rejected the appeal. The appeal panel recommendation said that there was no evidence to support Mrs E's claim that she had been given incorrect advice; the answer given to question 4 of the claim form could not be considered to be an 'obvious error'; and there was no evidence produced to show that the RPA had given misleading advice. In April 2008 RPA wrote to Mr and Mrs E with the decision that the Minister had rejected the appeal. The Member asked the Minister to reconsider the case, but he said that he was constrained by the Regulations and unable to grant the appeal. On 9 May 2008 the Member referred the complaint to me.

### **Mrs E's description of the effect on them of losing the 2005 payment**

<sup>252</sup> Mrs E has told us that, without the 2005 SPS payment, she and her husband were unable to pay someone to help them in their busy period. When it came to lambing in 2006 they did not even get all the sheep home. She said that their son had dropped everything (he was self-employed) to help them out. She said that he went home after lambing, put his house on the market, and came back to the farm to help them out permanently. Mrs E said they would not still be farming if it had not been for their son. Mrs E said it was very stressful; she was just getting over cancer and it had been a terrible time. She said that they had incurred extra fuel and telephone costs and had to complete extra paperwork for the appeals, as well as the £100 cost of the appeal. Mrs E's son has told us that he considered they had lost about two days' business, which he defined as two nine-hour days at £12.50 an hour.

### **Some comments from Mr and Mrs E on a draft of this report**

<sup>253</sup> We shared a draft of this report with Mr and Mrs E. They had no comments to make except to confirm the accuracy of the facts as we had recorded them.

## Mr F: a summary of his story

### About Mr F

<sup>254</sup> Mr F is a livestock farmer, farming about 5 hectares (12.4 acres) in the East Midlands of England. He rents his land. His holding includes the family farm's suckler cows. His family have a separate, larger holding, set up for dairy farming. The value of his 5ha SPS claim would have been about £12,080 in 2005,<sup>50</sup> if he had avoided making a dual claim for the land he used under a grazing agreement. This was a relatively large sum for the land area, which reflected the size of the historic part of his entitlements. Mr F's dual claim meant he paid a penalty for overdeclaration that wiped out his 2005 and 2006 payments as well as part of his 2007 payment. In 2005 Mr F was 47 years old.

<sup>255</sup> Mr F has told us he had known the owner of the grazing land for some years and had a 'gentleman's agreement' with him about the land. The owner died in December 2004.

<sup>256</sup> The medical evidence we have seen says that Mr F was completely fit and well until 1999 when poison contaminated his farm. A doctor's report prepared in February 2005<sup>51</sup> said that he had severe chronic fatigue syndrome, and that his history was highly suggestive of organophosphate poisoning. It meant he was unable to work and run his business. The papers we have seen also show that Mr F had had a stroke in 1999. Mr F has told us that his health has improved very much since 2005. In his comments on a draft of this report, made through his representative, Mr F said that RPA had never taken his health status into account.

<sup>257</sup> Evidence provided in September 2005, by a consultant physician and clinical toxicologist at Guy's Hospital in London, said that in 2003 Mr F had, with other assessments, been assessed for his cognitive and memory function. The doctor's letter said: *'This showed his verbal reasoning abilities to be less well developed than his non-verbal abilities, with long-standing learning difficulties in the verbal domain'*. Mr F has told us that Guy's Hospital advised him to write things down as soon as he thought of them, as he would forget things very easily.

### Mr F's request to change his reference period

<sup>258</sup> In April 2005 Mr F completed a form asking RPA to change his reference period (form SP2). He said that a person had put poison on the farm and he provided papers to show the effect. He also gave RPA a copy of a letter to his GP from a specialist, dated 8 November 2004. The letter said that a fat biopsy suggested Mr F had had an abnormally high exposure to certain pesticides and set out how those might affect him. It said possible results included chronic fatigue syndrome and neurological damage. RPA have said they received both these documents.

### The 2005 claim

<sup>259</sup> In 2005 Mr F was looking after his SPS claim himself. Farm Crisis Network, now his representative, was not involved and Mr F has told us that he and his parents did not feel able to afford an agent to look after their separate claims. Mr F has said that he and his parents met RPA before making their SPS claims. He has said he had two concerns: the effect of the organophosphate poisoning on the amount he would receive in his SPS claim; and the land

<sup>50</sup> His 2005 entitlement statement put his entitlements at €17,715.15. The 2005 SPS euro conversion rate was €1 = £0.68195.

<sup>51</sup> The report was prepared for a bank by a doctor who explained that she had a particular interest in environmental medicine and that Mr F had also been seen by the Medical Toxicology Unit at Guy's Hospital.

covered by the grazing agreement. Mr F has told us that he asked RPA for advice on both points. RPA have no record of any meetings with Mr F.

<sup>260</sup> On 20 April 2005 the late landlord's agent wrote to Mr F. His letter said:

*'[The late landlord's sister] has been in touch with me and she says you've told her you'd like the grass keeping again. There is still £800 outstanding from last year so before I can consider a new agreement I must be paid up to date.'*

We have been unable to establish when the grazing agreement for 2005, mentioned in the agent's letter of April 2005, was made. Mr F has said that he believes he paid the rent in June 2005.

<sup>261</sup> In May 2005 the late landlord's agent and Mr F submitted SPS claims for 2005. RPA have told us that they received a letter dated 10 May 2005 with Mr F's SPS claim. It said:

*'Further to our meeting on the 1-04-05 at Chalfont Drive Nottingham, with having the disaster of the poison being put down on our holding it would be in your best criteria to start my base year in 1997. This was when the first lot of poison was put down. It was the 8-02-97, see the papers provided and then three more lots were also put down between 1999-2000.'*

*'It wasn't until spring 2001 that the real disaster took place where we lost a lot of cattle. It is now 2005 and we still haven't got the chemical cleared up. I have now picked it up myself from the cattle. See the paperwork.'*

*'I hope DEFRA could pull their fingers out a bit more so we can get thing under control. I do not know how to do the single farm*

*payment scheme because it is difficult to run a business with so much worry. To top all of this off I have been under a TB2 restriction [a movement restriction on stock] for the past 26 months.'*

<sup>262</sup> Mr F has said he wrote RPA a further letter dated 10 May 2005, which said:

*'Further to our meeting on the 1-05-05 at Chalfont Drive Nottingham. I put fields on my IACS from [six fields, named by reference number]. I want all these fields deleting if [the late landlord's estate] decide to claim so it will not jeopardize with any of my claim. I also enclose a copy of my health report as explained in previous letters.'*

Mr F added a postscript: *'The reason this needs to take place is because [the landlord] has died'*.

<sup>263</sup> I refer to this as the letter about the grazing land. RPA have told us they have no record of receiving this letter. The letter omitted one further field covered by the grazing agreement. At our request, RPA have checked their electronic and hard copy files for Mr F and for Mr F's parents' SPS claims and for the requests to amend the reference period – in case the letter about the grazing land was misfiled. They have told us that the missing letter was not in any of the files. In commenting on a draft of this report, Mr F has said that this missing letter was raised at his Stage 2 appeal but not followed up by RPA.

<sup>264</sup> The effect of Mr F's mistake at this point was not only that his SPS claim overdeclared the land that was *'at his disposal'*. RPA have told us he also claimed 0.7ha of non-agricultural land. Under SPS Regulations, both mistakes meant RPA would impose financial penalties, set by the scale of the overdeclaration.

## RPA's handling of the claim from May 2005 to December 2006

<sup>265</sup> On 12 May 2005 Mr F's SPS claim form passed RPA's initial checks. Among other things, the checklist said: *'Refer to desk instructions if a clear request for assistance has been made or request for contact to be made by the farmer.'* RPA have told us that there is no evidence that any further action was taken in response to Mr F's letter of 10 May 2005 in which he said: *'I do not know how to do the single farm payment scheme because it is difficult to run a business with so much worry.'* Later in May 2005 RPA wrote to Mr F about his claim, asking him to initial his amendments, which he did. He also sent them a letter, dated 3 June 2005, saying that his landlord had died.

<sup>266</sup> In November 2005 RPA identified part of a dual claim and obtained confirmation of the correct claimant from Mr F and the landlord's agent. RPA identified a further part of the dual claim in January 2006. They asked Mr F to explain matters and in April 2006 he wrote to them. He said that he had made a mistake and the land was being claimed by his landlord. He said he had declared this on an IACS 22 form (used to register land on the Rural Land Register) in May 2005, with *'the letter about [the landlord] dying so it didn't jeopardize with any of my claim.'* (RPA have told us they have no record of receiving an IACS 22 form in 2005 from Mr F.) From August to December 2006 Mr F asked RPA about his payment. They told him about the effect of the penalties only at the end of December 2006.

## Mr F's Stage 1 appeal – from January 2006 to August 2007

<sup>267</sup> Mr F wrote to RPA in December 2006 as soon as they told him he should appeal. They received his Stage 1 appeal form in January 2007. He said his grounds for appeal were that he had declared what he had done when he submitted his claim, in his letter about the grazing land of 10 May 2005. He also provided medical evidence and an undated extract from a grazing agreement which included a specification that he was not to claim SPS on those fields. It is unclear whether this is from the missing 2005 agreement or an extract from the 2006 agreement, which it matches. Farm Crisis Network became involved in his case in 2007.

<sup>268</sup> In February 2007 RPA considered Mr F's appeal. The officer referred to the guidance in the 2005 SPS Handbook<sup>52</sup> that farmers should resolve whether or not land was at their disposal before they claimed and that RPA would apply penalties if a farmer overdeclared. The officer recommended rejecting the appeal.

<sup>269</sup> From February to March 2007 Mr F asked RPA for updates on his 2006 SPS claim. They gave him varying messages. At first they told him that it seemed he was not going to receive a payment for 2006. But in later calls RPA gave him the information shown on the system, which suggested that the 2006 claim was simply awaiting authorisation. Also in March 2007 RPA decided to treat Mr F as a rural stress case. (RPA had a set up a team to monitor any cases where they believed the claimant was suffering particular stress. The team provided a contact point for bodies, such as Farm Crisis Network, representing farmers.) RPA's payments system shows that they paid Mr F £10,157.70 on

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<sup>52</sup>Page 26, paragraph 63.

9 May 2007. They have told us that this was his SPS 2006 payment, made to him in error. They paid him a further £128.55 in August 2007 – the modulation payment.

270 In June 2007 another RPA officer asked for legal advice on Mr F's Stage 1 appeal. She suggested that RPA accepted Mr F's letter of 10 May 2005 about the grazing land as a notification of his error, although they had no record of receiving it. But she pointed out that he still faced a penalty, because the letter had omitted to mention one of the dual claim fields. She suggested that his later letter of June 2005, saying that the landlord had died, should have alerted RPA to the possibility of a dual claim and that RPA could accept that letter as notification. That argument did not succeed. In August 2007 RPA rejected Mr F's appeal.

271 RPA's papers do not include any consideration of whether or not they should have taken account of the information about Mr F's health or understanding in his letter of 10 May 2005 about the poison. In September 2007 RPA received Mr F's Stage 2 appeal.

### Mr F's Stage 2 appeal ends

272 In February 2008 an appeal panel heard Mr F's Stage 2 appeal against the application of penalties on his 2005 claim. Later in February 2008 the Minister accepted the appeal panel's recommendation to reject Mr F's appeal and RPA sent Mr F the decision. RPA's payment system shows that they paid him £7,629.08 on 5 March 2008 (and a modulation payment of £161.41 on 9 September 2008). They have told us that this was Mr F's SPS 2007 payment, made without penalty in error. In July 2009 the Member referred Mr F's case to the Ombudsman.

RPA's work on the appeal did not identify the error in claiming the non-agricultural land. The dual claim obscured the earlier penalty imposed by the RITA computer system.

### Mr F's description of the effect on him of the penalty

273 We asked Mr F about the impact on him of dealings with RPA about his 2005 SPS claim. He told us that the money he lost, which he put at £15,000 to £18,000, was worth about half the farm's income. He said that not getting the SPS money was like *'having your legs pulled from under you'*. Mr F said that he had had to remortgage after what he calls the disaster of the poisoning incident. He fell behind with payments, and in 2006 received a possession order. After that he started his relationship with Farm Crisis Network in April 2007, but it had been hard for him to ask for help. He said that the problems he had with RPA were a *'contributing factor'* to getting behind with the mortgage payments, which led to the possession order. They had also had an effect on his health.

### Some comments by Mr F on a draft of this report

274 We shared a draft of this report with Mr F and his representative. He told us, through his representative, that it portrayed a genuine account of what had happened. He also said that he felt a lack of information from RPA meant that he remained uncertain about how his SPS payment (particularly the historic element) was made up; what penalty RPA had intended to collect from him; and over how many years that penalty was meant to run.

## Mr G: a summary of his story

### About Mr G

<sup>275</sup> In 2005 Mr G ran a small arable farm of about 14 hectares (35 acres) in the East of England. He took over the farm from his father. He describes himself as a part-time farmer as he also has (and had in 2005) a small engineering business. His 2005 SPS claim would have been worth about £2,292<sup>53</sup> if he had activated his entitlements as he intended. Mr G is still farming.

### The 2005 claim

<sup>276</sup> Ahead of the SPS claim, Mr G wanted to register a field on the Rural Land Register. RPA had told him that, if they could not register the field in time, he would need to adjust his pre-populated claim form himself. RPA received Mr G's 2005 Scheme claim in May 2005, before the claim deadline. He had completed the correct boxes to establish his entitlements. But he had marked the 'no' box for the question about activating his entitlements and he had left column J (about activation) empty on the field data sheets. He has said that he believed, partly because of needing to register the land and partly because of paragraph 320 of the Handbook (Annex B, paragraph B2), that he could not activate the fields before the land areas were settled and the entitlements established. He told us that he expected RPA to contact him again to activate his entitlements when they had completed his registration and established his entitlement. He also told us that he had used RPA's checking service when IACS had started and would have used it again in 2005 if it had been available.

### RPA's handling of the claim from May 2005 to February 2006

<sup>277</sup> In May 2005 RPA completed the Level 0 validation (see glossary) of Mr G's claim. They returned the form to him asking him to initial corrections he had made to the form, which he did. The day after the deadline he received confirmation from RPA that they had registered his field. In July 2005 RPA completed a further claim form checklist when they keyed in the claim.

<sup>278</sup> In February 2006 RPA sent Mr G a non-validated entitlement statement (see glossary). They told him his claim was still being validated. They asked him not to contact them.

### Mr G's requests for information – April 2006 to October 2006

<sup>279</sup> Mr G telephoned RPA in April, June and July 2006 about payment. At the end of June 2006 RPA sent him £379.57, which he told them was far less than the 80 per cent of his payment that they said it was. The officers who answered his calls said nothing about any problem with his claim – the information they had suggested only that it was still being processed.

<sup>280</sup> In July 2006 RPA told Mr G he had failed to activate his SPS entitlements for 2005 and their payment had been a mistake. RPA asked Mr G to write to them, which he did, explaining that he did want to activate his 2005 entitlements. A few days later RPA sent Mr G a definitive entitlement statement. This showed 14.3 entitlements worth a total of €3,699.12 (£2,292). RPA's letter said that if Mr G had applied to

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<sup>53</sup> His 2005 definitive entitlement statement put his entitlements at €3,699.12. The 2005 SPS euro conversion rate was €1 = £0.68195.

activate his entitlements in the 2005 SPS year he would receive his payment shortly. Mr G believed that meant RPA would pay his claim. In August 2006 and four times in September 2006 he telephoned RPA about his payment. In those calls RPA told Mr G that his claim was being worked on. At the end of September they told him he would not be paid. In October 2006 a manager in the customer relations unit told Mr G he could go straight to the appeal stage. Mr G complained that RPA had misled him for several months and the manager apologised.

### **Mr G's evidence of RPA's inconsistent decision-making**

<sup>281</sup> Mr G spoke to RPA later that month. RPA's note of the telephone call said he told them he had received the appeal form, but his neighbour had received payment without appealing. RPA told Mr G to complete the appeal form.

### **Mr G's Stage 1 appeal about his claim – November 2006 to March 2007**

<sup>282</sup> RPA received Mr G's Stage 1 appeal in November 2006. One of his grounds for appeal was that RPA's 2005 Handbook at paragraph 320 was misleading. Mr L, of the Bedfordshire and Cambridgeshire Rural Support Network, had helped him prepare his appeal. In February 2007 an RPA lawyer commented on the draft appeal decision about Mr G's appeal. He agreed that there was no legal basis for amending the claim. He also said he did not believe maladministration had occurred. He said that people commonly alleged that the customer service centre had told them to await payment, but he doubted that staff went beyond saying that payment would be based on the content of the claim form. In any case, he said, Mr G had lost nothing as a result. In March 2007 RPA sent

Mr G their Stage 1 appeal recommendation, rejecting his appeal.

### **Mr G's Stage 2 appeal about his claim – May 2007 to July 2007**

<sup>283</sup> In May 2007 RPA received Mr G's Stage 2 appeal and in June 2007 an RPA appeal panel heard his case. The panel recommended rejecting Mr G's appeal. They also said that RPA's actions had: *'seriously misled the applicant and caused him considerable distress'*. Mr G has said that he felt the appeal panel secretary and the SPS expert, who were RPA officers, took part too much in the hearing and the panel members seemed unfamiliar with some aspects of SPS. He has also said that it seemed the panel had no power to recommend a remedy for the maladministration they had identified. In July 2007 RPA wrote to Mr G to say that the Minister had rejected his Stage 2 appeal. RPA's letter did not mention the points made by the appeal panel about RPA's mishandling of his case. It is not clear, from the papers we have seen, whether or not RPA have recovered the £379.57 they paid Mr G by mistake.

### **Mr G's description of the effect on him of losing the 2005 payment**

<sup>284</sup> Mr G has said that without his 2005 payment he had to stop investment in machinery; rethink his cropping plans; defer his bill payments; and cut household spending to make ends meet. He had replaced his van in June 2005 and had slightly stretched his budget to do that. At the time he had been confident that he would receive his SPS payment. He told us that he believes it took 15 to 18 months for the knock-on effects of losing the 2005 payment to work through. At one point he had just £300 in his business current account, when he would usually expect to have at least four figures.



He ended up on pills for hypertension (high blood pressure), which cost him about £120 a year until he reached 60 in April 2011. He now receives free prescriptions. He also started to use an agent to make his SPS claim because he lost confidence in his ability to do that after 2005. Using the agent has cost £270-£280 plus VAT each year since 2006. Mr G puts the cost of his and Mr L's time at £500 for the day required to attend the Stage 2 appeal. On the same basis, he puts the cost of preparing for the hearing at £100.

### **Some comments from Mr G on a draft of this report**

285 We shared a draft of this report with Mr G and his representative. Through his representative, he told us that the report gave a clear summary of his case and the circumstances around it. He emphasised the tangible financial effect on him of the stress he suffered because of his experience with SPS 2005 (paragraph 284).

## Mr H: a summary of his story

### About Mr H

<sup>286</sup> In 2005 Mr H was (and still is) an arable farmer, running a tenanted farm of about 93 hectares (230 acres) in the East Midlands of England. His SPS claim would have been worth about £20,245<sup>54</sup> in 2005 if he had activated all of his entitlements as he had intended. In 2005 Mr H sought advice from an agent about the SPS forms (because he shared ownership of some land), but he completed his own claim form.

### The 2005 claim

<sup>287</sup> In May 2005, before the claims deadline, RPA received Mr H's SPS claim in Nottingham. Mr H had answered yes to question 3 in part C of the form, confirming that he wanted to activate entitlements. Mr H has told us that, by mistake, he had omitted to complete column J for one of the field data sheets. The 12 fields on this sheet made up about 68ha of his holding. On the summary page of the field data sheet (which was for farmers' own use and not part of the claim) he had written that he was applying to establish entitlements for 93.33ha and to activate entitlements for 7.50ha. The figure of 7.50ha was the amount of his set-aside. He had activated 17.70ha.

### RPA's handling of the claim from May 2005 to February 2006

<sup>288</sup> Also in May 2005 Mr H's claim passed RPA's Level 0 validation check (see glossary on validation). In June 2005 it went through a further checklist when RPA keyed it into their system. In August 2005 RPA contacted Mr H

about a mismatched field data entry in the claim.

<sup>289</sup> In February 2006 RPA sent Mr H his definitive entitlement statement, which said he had established entitlements worth €29,686.39 (£20,245). Mr H has said that he spoke to RPA after he received the statement. In March 2006 RPA paid Mr H £2,411.71.

### RPA decide they can activate all Mr H's entitlements – September 2006

<sup>290</sup> In late March and in April 2006 Mr H asked RPA, twice by telephone and twice by letter, to explain his payment. He wrote to them in May 2006 asking them to consider his cases under the rules on 'obvious error'. He contacted RPA again in August 2006, referring them to his earlier letters. In September 2006 RPA told Mr H, in writing, that they would activate all his entitlements.

### Mr H asks RPA when they will pay him

<sup>291</sup> From November 2006 to March 2007 both Mr H and the Member contacted RPA about Mr H's 2005 payment. In June RPA sent Mr H's case for payment. On the same day, another RPA officer looked at Mr H's case. He noted that it should not be paid. In July 2007, after the National Farmer's Union (NFU) contacted RPA on Mr H's behalf, RPA told the NFU there was a doubt about his case. They said they would write to Mr H within a week. That did not happen. In August 2007 Mr H told RPA that he was very concerned. He said he had made a financial commitment believing '*I would receive my payment sooner, rather than later. Financially I am now in a very precarious position and my health is suffering*'.

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<sup>54</sup>His 2005 entitlement statement put his entitlements at €29,686.39. The 2005 SPS euro conversion rate was €1 = £0.68195.

### **RPA decide they cannot activate the claim – September 2007**

<sup>292</sup> In September 2007 RPA wrote to Mr H saying that they could not amend his claim. Mr H told RPA again that he had budgeted for the extra money that the decision of September 2006 had meant he would receive.

### **Mr H's Stage 1 appeal – November 2007 to May 2008**

<sup>293</sup> At the end of November 2007 RPA received Mr H's Stage 1 appeal form. He said he was appealing against 'A total reversal of a decision made by you in September 2006, on which I budgeted, **twelve** months later'. At the end of February 2008 Mr H wrote to RPA asking them to consider his 'as a desperate case' so that his 2007 payment could be released early. He said he had cash flow problems and the situation was also affecting his health. In April 2008 an RPA lawyer commented that Mr H could argue that their maladministration led to financial loss. The lawyer said he saw no evidence yet of loss flowing from maladministration, but RPA could mention to Mr H that he had a right to complain about maladministration.

<sup>294</sup> In May 2008 RPA sent Mr H their Stage 1 appeal recommendation – the appeal was unsuccessful because RPA found there was nothing in the claim form to indicate 'obvious error'.

### **Mr H's Stage 2 appeal – July to November 2008**

<sup>295</sup> In July 2008 RPA received Mr H's Stage 2 appeal. In November 2008 an RPA appeal panel upheld RPA's decision not to make payment. They said this was because the case did not fall within the 'obvious error' provisions. They also noted RPA's poor handling of Mr H's case and the effect of the letter of 4 September 2006.

### **Events after the appeal hearing**

<sup>296</sup> The day after the appeal hearing, the appeal panel secretary telephoned Mr H and gave him his email address. Separately, an RPA officer alerted colleagues that Mr H's case might come to the attention of Ministers. That was because Mr H's sister-in-law, who had accompanied Mr H to the hearing, had said she knew RPA's new Minister. The appeal panel secretary looked into why RPA had told Mr H he would be paid and updated Mr H by email. In December 2008 RPA put a submission to the Minister with the panel's recommendation that she should reject the appeal. They also said that they accepted they had 'maladministered' the case and proposed a consolatory payment of £500. On 15 December 2008 the Minister's private office confirmed that she had accepted the recommendation. On 23 December 2008 RPA sent Mr H the Stage 2 appeal recommendation. Mr H told us that he had declined to accept the consolatory payment from RPA.

<sup>297</sup> In March 2009 the Member referred the complaint to me.

### **Mr H's description of how losing the 2005 payment affected him**

<sup>298</sup> Mr H told us that he completed his 2006 SPS claim successfully on his own but he has used an agent since then. He has also told us that he bought a small second-hand combine harvester (a New Holland TX34) for about £15,000 on the basis that he would receive the payment. Mr H has said that he was not in the red at the bank and could afford to pay for the machine, but it did affect his budgeting. We have seen an invoice dated 22 August 2007 for the deposit of £3,166.62. Mr H has told us that he paid the balance in March 2008. He has also explained

how isolated he felt when, first, he realised that he might not get the payment and then no one in RPA would give him an answer. They did not return his calls. He said RPA's actions had caused him 'heartache, turmoil and worry'.

### Some comments from Mr H on a draft of this report

<sup>299</sup> We shared a draft of this report with Mr H. He said:

*'If the RPA had sent the correct decision to me in the letter dated 14 September, 2006, I would have been spared the subsequent extreme stress, anxiety, lack of sleep, financial management and related family problems. If the decision had been to refuse payment, although I may not have been pleased, I would not have suffered this subsequent personal torment – something I don't feel I deserve and which I do not ever want to experience again. I would certainly have never committed to making the considerable investment in a replacement combine if my application had not been approved by the RPA. I went ahead with the purchase in the mistaken belief that the money was going to be paid to me in due course. I would not have put myself through the ordeal of going to appeal and then to the Ombudsman if the RPA had not made such a major mistake in leading me to believe that I was entitled to the payment at this time.'*

<sup>300</sup> We also received comments from people who had contact with Mr H during the time that he was waiting for payment from RPA and then making his appeal. An agent who had advised Mr H and knew him through the local discussion group of the Tenant Farmers' Association described her recollection of how Mr H reacted to the written confirmation from RPA that they

would treat his mistake as 'obvious error'. She said:

*'When we met at the discussion group, Mr H updated us as to progress and was quite frank as to the impact the "positive" decision had on his business and his personal wellbeing. I recall him commenting on the impact on cash flow and I specifically recall him commenting that he would be able to re-invest in machinery and make decisions that he did not feel he could make before he knew he would receive the whole of his 2005 payment. When he had received the confirmatory letter, at no time did I or, I believe, Mr H believe the decision would or indeed could be reversed.'*

*'I was therefore very surprised when Mr H said he had a letter from the RPA reneging on the previous agreement regarding his clerical error. Mr H was understandably confused by this decision as well as shocked and I think it fair to say he appeared almost traumatised by the decision. He told me he would be "appealing" the decision. From that time on Mr H kept the discussion group updated and it was obvious to me and I believe other members of the group, the impact this was having on Mr H – especially when the group expressed disbelief at how the RPA had handled the situation.'*

*'I really believe the whole experience has been extremely stressful for Mr H – and I really believe that the most traumatic aspect was the reversal of the RPA's written decision. Mr H was visibly stressed by this decision and I believe he needed considerable support during this period to try to come to terms with the way in which he had been treated by the RPA. The sheer length of time taken by the RPA in the decision process did not help –*

*particularly as this encouraged him to make financial decisions which I do not believe he would have made without having received the RPA's letter. I believe it is particularly upsetting to him that he followed all the RPA's processes and rules but to no avail.*

*'Whilst I do not advise Mr H on the management of his business, I believed from the discussions at the time, the original letter from the RPA was a deciding factor in the decision to purchase machinery and he therefore made a financial commitment to spend approximately £15,000 which he has had to fund from other sources where as he genuinely believed would be funded through the 2005 payment.'*

<sup>301</sup> A representative from Farm Crisis Network also contacted us. He said: *'Mr H has been very frustrated and depressed by the inconsistent and seemingly contradictory messages that have been ongoing from RPA over six years'*.

## Mr I: a summary of his story

### About Mr I

<sup>302</sup> Mr I owns a farm in the South West of England. He bought a second farm in late 2002 and in 2003 he merged both farms into one holding of about 187 hectares (462 acres). He claimed SPS successfully in 2005, although he was still waiting for his mapping details to be digitised by RPA (see glossary on the Rural Land Register). His 2006 SPS claim would have been worth about £29,600<sup>55</sup> if he had claimed it successfully.

<sup>303</sup> Mr I has said that in 2006 he had read the SPS guidance in detail before completing his claim forms and telephoned the helpline several times without getting through. (He has also commented that RPA sent him many booklets, which suggests he did not have time to read everything.) He said that, on the one hand, RPA kept changing things and only some rules seemed to be strict. But on the other hand, the declaration on the form (see Annex B) was very clear about what a signature implied. It was the declaration that meant he would not complete the form until he was sure the field data was accurate.

### Mr I asks RPA to register his land – February 2005

<sup>304</sup> In February 2005 RPA received Mr I's claim to add some land to the Rural Land Register. He made a 2005 SPS claim without receiving their response, in line with RPA's 2005 guidance.

<sup>305</sup> In August 2005 RPA sent Mr I his updated maps and in September 2005 he asked for corrections – he could see three errors. In autumn 2005

to January 2006 he and RPA corresponded about his National Reserve claim. In January to March 2006 he answered RPA's mapping queries from his 2005 SPS claim and raised his own queries. He wrote to RPA and attempted to telephone them. They sent him standard letters about his 2005 claim. On 1 February 2006 Mr I told RPA that he had not received any digitised maps. This letter seems to have crossed in the post with RPA's letter to him of 2 February, which listed seven fields which had changed. But two fields he had queried were not mentioned.<sup>56</sup> He received no answer to his specific questions about his maps, although work on those was completed in February and March 2006.

### The 2006 SPS claim

<sup>306</sup> On 26 April 2006 RPA received the first of three 2006 SPS claim forms Mr I would send them. The form was incomplete, but he had signed and dated the form. His covering letter explained matters and asked, among other things, when RPA would send him a full set of maps. Mr I attempted again to telephone RPA at the beginning of May 2006, but was unable to speak to anyone. After that, he relied on writing letters. In commenting on the draft report, Defra and RPA have said: *'The letter dated 26 April 2005 refers to his 2005 application and the answers to his questions are not critical to his ability to complete the 2006 form'*. They also said:

*'Mr I certainly contributed to the situation by his refusal to submit the 2006 form until all his questions had been answered. He had much of the information needed from his 2005 form and other correspondence*

<sup>55</sup>RPA made Mr I a 50 per cent partial payment of his 2006 SPS claim, by mistake. The payment was £14,806.09. It follows that 100 per cent of his payment would have been £29,612.

<sup>56</sup>The [...] and [...] parcels.

*and could have submitted a nearly fully completed form, with an accompanying letter to explain his situation, within time, had he been so minded.'*

<sup>307</sup> On 3 May 2006 Mr I sent his second claim form, which he had not signed. His covering letter had some missing text, but it was clear that he felt he needed more information from RPA before he could sign his claim form. He wrote to RPA again, expressing increasing anxiety, on 8 May, 17 May and 2 June 2006. In his letter of 17 May 2006, Mr I again asked for a set of maps saying that he had never received them. On 12 July 2006 he wrote to the Secretary of State. RPA's response was, on 4 and 23 May 2006, to send Mr I standard letters (called SPV1s), intended to tell claimants about omissions in the information they have provided. (RPA have told us that there was a dual claim in 2005, but they removed the dual claimed field without applying penalties.)

### **RPA postpones the 2006 SPS deadlines – twice**

<sup>308</sup> RPA's guidance directs staff to try three times to telephone a person before writing a letter. We have seen no evidence that RPA attempted to telephone Mr I. In 2006 RPA extended the deadlines for SPS claims. First, on 5 May 2006, they said that late claim penalties would not apply to claims received between 15 May (the usual deadline for claims) and midnight on 31 May 2006. The final deadline for claims would be 9 June 2006. Then, on 22 June 2006, they said penalties would start to apply only from 16 June and the final deadline would be 10 July 2006. The effect of the extended deadlines was that RPA had over 10 weeks to reply to Mr I's queries about his first claim form, received on 26 April, before the 10 July absolute cut-off for accepting 2006 claims.

### **Mr I's maps arrive, he sends RPA a completed claim**

<sup>309</sup> In August 2006 RPA sent Mr I a full set of maps, which he accepted were correct. RPA have told us that this will almost certainly have resulted from his letter of complaint to the Secretary of State in which he asked for a set of maps. RPA also replied to his letters of 25 April 2006 and 3 May 2006 and to a telephone call he made on 9 August 2006. They apologised for their delay in doing so. On 15 August 2006 RPA received Mr I's third claim form, based on the updated maps. The form was complete and signed and had a covering letter. On 30 August 2006 RPA wrote to Mr I to say they would accept his 2006 SPS claim without penalty on the grounds that they had previously received two claims from him before the deadline. They gave him a named contact. A day later the RPA customer relations unit, apparently unaware of the other letter, also wrote to Mr I.

### **RPA change their view on Mr I's claim**

<sup>310</sup> In December 2006 RPA wrote to Mr I saying that they could not accept his 2006 claim, because the deadline for that information had been 10 July 2006. RPA added that no SPS payments would be made to Mr I for 2006 and any entitlements would be considered unused for that year. Mr I said that problems caused by RPA had led to his delay in completing a full 2006 SPS claim.

### **RPA pay Mr I £14,800 by mistake and reject his appeal**

<sup>311</sup> In February 2007, by mistake, RPA paid Mr I £14,806.09. This was a partial payment for SPS 2006. In March 2007 RPA confirmed their

decision not to accept his 2006 claim and apologised for any confusion caused. After Mr I appealed, RPA debated whether or not to accept the claim. In August 2007 they considered an internal argument that they had scope to pay his claim under the 'obvious error' provisions. They also considered possible maladministration, up to a point. In their view this was that their SPV1 letters failed to give Mr I a specific direction to activate his entitlements and their August 2006 error of saying they would accept his claim. They rejected all those arguments. During the discussions about Mr I's appeal, an RPA lawyer noted that the appeal panel could confuse eligibility for SPS with maladministration. He suggested that his colleagues considered clarifying what they expected the panel to look at. In November 2007 the Stage 1 appeal upheld the decision to reject his claim. In April 2008 RPA upheld their decision in a Stage 2 appeal.

### Mr I's evidence of RPA's inconsistent decision-making

<sup>312</sup> The evidence we saw in Mr I's case included details of his 2005 SPS claim. Mr I and another farmer had both established entitlements for the same two fields, by mistake. RPA have told us that, in principle, the dual claim should have triggered a penalty for the other farmer. In practice, the case worker accepted the other farmer's explanation that he had made a mistake.

### Mr I's description of the effect on him of losing the 2006 payment

<sup>313</sup> Mr I has said that he was still uncertain what RPA have paid him, or recovered from him. He sums up the effect on him as the loss of his 2006 subsidy, the reduced value of his future entitlements and the trouble of dealing with

RPA, which made him feel like a criminal. Mr I has said he was fortunate to have other means which meant he could pay his farm staff despite the loss of the subsidy.

<sup>314</sup> RPA made some comments when we interviewed them about what happened in Mr I's case. This is a summary of what they said.

- RPA have said that dealing with an apparent dual claim from Mr I's landlord had caused some of the delay in Mr I's case during 2005.
- RPA have said that a written request for up-to-date maps would have produced a quick response and that Mr I should not have needed to go as far as writing to the Secretary of State to obtain up-to-date maps.
- RPA established, in response to our enquiries, that a field was missing from the preprinted claim form received by RPA on 10 May 2006 [...] and that another field [...] was preprinted but had the wrong hectareage. The preprinting had inserted a figure of 2.13ha, which was the area of the missing field [...].
- RPA's view was that the information in RPA's letter to Mr I of 2 February 2006 would have been of use in filling in the 2006 claim form and that Mr I's understanding of RPA's systems was good enough for him to have been able to analyse the information they gave him.

### Some comments from Mr I on a draft of this report

<sup>315</sup> We shared a draft of this report with Mr I. In his comments on the draft, he said that he agreed with most of our reporting of the facts and was willing to accept our account on the small points where his recollection



differed from what we had said. He asked for written clarification from RPA of how his SPS claim stood in terms of the National Reserve (paragraph E276).

## **Conclusion**

<sup>316</sup> In chapter four, I have set out the complainants' stories. In chapter five I set out my general findings about RPA's handling of claims to SPS in 2005 and 2006.

## Chapter five

### **My findings – whether there was maladministration by the Rural Payments Agency in their handling of claims to the Single Payment Scheme generally in 2005 and 2006**

317 I make these findings in the light of the evidence set out in the chronology of events in Annex A. The chronology is summarised in the key facts section of this report. My findings also reflect what I have seen in the individual complaints we have investigated. I have assessed this evidence against the overall standard that I set out in chapter two.

318 My findings refer to RPA, but Defra's close relationship with RPA means that what I say about the executive agency also applies to the Department.

319 Here are two reminders, from the specific standard, of the context that RPA defined for themselves in 2004-05 and 2005-06. The specific standard is in chapter two of this report.

*'A customer focused organisation delivering high quality services ...*

*'Provid[ing] fair, responsive and high quality services to its customers, minimising administrative burdens placed on the customers it serves.'*

Source: from RPA's mission and objectives, in their 2004-05 and 2005-06 Annual Reports.

320 Here is a reminder of what the EU farm subsidies, such as SPS, are for, again from the specific standard. The CAP support schemes provided for:

*'direct income support in particular with a view to ensuring a fair standard of living for the agricultural community. This objective is closely related to the maintenance of rural areas.'*

From the preamble to Council Regulation (EC) No 1782/2003.

321 In October 2006 the National Audit Office gave their view on RPA's implementation of SPS.

*'Implementation has not provided value for money because the project has cost more than anticipated and is not fully implemented as scoped, planned efficiency savings will not be achieved, relations with the Agency's customer base have been damaged and there is a risk of substantial disallowance of expenditure by the European Union.'*

This is covered in my chronology and key events.

### **First general finding of maladministration: RPA failed to get it right, or be customer focused, for a number of cases for SPS 2005 and, to a lesser extent, for SPS 2006**

322 What would 'Getting it right' and 'Being customer focused' have looked like in this context? If RPA had been operating effectively it would have:

- provided timely written guidance and information that was accurate, comprehensive, clear;
- provided easy access to accurate help and information either through local RPA drop-in centres or via the telephone;

- planned better for the level of error in farmers' claims and communicated their approach effectively to farmers;
- made meaningful checks on claim forms;
- ensured staff were aware of RPA's obligations under disability discrimination law and empowered them to act when staff members considered adjustments were appropriate;
- managed the backlogs on the Rural Land Register properly; and
- made consistent decisions.

<sup>323</sup> However, as I now go on to explain, despite RPA's intentions, that did not happen. RPA failed to 'get it right', or 'be customer focused', for a number of cases for SPS 2005 and, to a lesser extent, for SPS 2006. That failure had serious implications for the farmers trying to claim SPS.

### **Many farmers needed tailored advice**

<sup>324</sup> Parts of the 2005 SPS Handbook, for example, those dealing with activation of entitlements, special entitlements and fruit, vegetable and potato authorisations, proved insufficiently clear for some farmers to understand without extra help. The Handbook spoke the jargon-heavy language of the EU regulations. It had no index or other means of cross-referencing between related sections.

<sup>325</sup> No handbook can reasonably be expected to cover every point of complex legislation. The 2005 SPS Handbook could have been good enough, if RPA had given farmers adequate help in other ways. They did not.

<sup>326</sup> Defra and RPA have made it clear, in their comments on a draft of this report, that they

believe they did give farmers adequate help. I cannot agree. RPA had reduced farmers' access to face-to-face, personalised information and checks on claims during the last years of the IACS subsidy schemes. That was understandable, given the evidence we have seen that farmers were used to the IACS rules. But the evidence we have gathered is that some farmers were still seeking, and obtaining, tailored information from RPA officers in the years immediately preceding SPS. And a new scheme was likely to renew a wider need for a more personalised level of service. That level of service was not available. The telephone-based customer service centre, which replaced the level of personal service RPA used to give farmers, often proved to be either unavailable or unreliable when farmers telephoned.

<sup>327</sup> We have seen, from RPA's own snapshots in August and September 2006, that letters could go unanswered until months after the SPS deadline had passed. This was the case in 2005 and in 2006. The supplementary guidance posted to farmers and the updates added to RPA's website could not make up for the failings of the core sources of information: the Handbook and the customer service centre. This was the first year of a complex scheme. Many farmers needed tailored advice – not on how to maximise their SPS payments, but on how to complete their SPS claims properly. They did not get it.

### **RPA's inadequate claims checking**

<sup>328</sup> RPA's initial checks on claim forms in 2005 (and in 2006) were basic. They were so basic that forms on which the farmer had failed to claim any subsidy could pass the checks. Within RPA, at least one officer recognised that RPA might have a responsibility that went beyond their legal obligation. In April 2005 an RPA lawyer

pointed out that RPA had no legal obligation to return forms at all, or to query incomplete data. But he also pointed out that, from a policy perspective, *‘there could be a customer service driver that encourages RPA to do its best to ensure that as many eligible applicants as possible apply to the scheme’* (see Annex A). The Defra Permanent Secretary has told us that this was the opinion of one lawyer, not a collective view. We have seen no other papers that explain RPA’s reasons for deciding against contacting claimants whose forms had clear anomalies. I have concluded that in 2005 RPA decided on a narrow interpretation of what customers could expect from them, contrary to their public statements about being a customer focused organisation.

### **A backlog of mapping forms and correspondence**

<sup>329</sup> The Rural Land Register was a further problem area for RPA in 2005. The problem ran into 2006. My chronology explains how the Register went live, late, in September 2004. The problems meant that land data was not fully accurate, or agreed with all farmers, in time for SPS 2005 or for SPS 2006. It also meant the land details on forms were only partly preprinted. Significant numbers of farmers with mapping queries were unable to get timely replies from RPA by telephone or by letter, although RPA were able to answer many queries. RPA dealt with the worst of the mapping problems by relaxing the absolute requirement to have land on the Rural Land Register in order to receive SPS. But that still left a backlog of mapping forms and mapping correspondence. Mr I’s complaint shows what that could mean for individuals.

### **RPA’s service to customers with disabilities**

<sup>330</sup> We have seen no evidence that RPA recognised that SPS claimants with disabilities, or communication needs, could be at a disadvantage in attempting to make a successful SPS claim. Because of that failure, RPA did not take disability issues properly into account when considering applications by claimants with disabilities. They labelled claimants as business people who, with or without a disability, had a duty to look after their own needs in dealing with RPA. However, whether someone is or is not a business person is not a relevant consideration when considering their disability needs. Taking it into account prevented RPA from acting properly in terms of the relevant Code of Practice. It said:

*‘The duty of reasonable adjustment is best met by the service provider trying to anticipate the types of problems which could arise and by training its employees to enquire rather than act on assumptions.’*

### **Misleading comfort messages**

<sup>331</sup> In this context, RPA’s comfort messages to farmers were misleading. We have seen that in April and May 2005 RPA heard farmers’ worries about RPA’s administrative problems and about the risk to farmers who made mistakes. RPA’s response was to say they would try to be flexible and to talk about the ‘obvious error’ provisions for correcting mistakes. We have seen no messages in the run-up to the May 2005 deadline that referred to the difficulties likely for claims where farmers had made the type of error made by the complainants in this investigation.

## A lack of timely information

<sup>332</sup> RPA were often unable to give farmers accurate, or timely, information about the outcome of their claims – over the telephone or in writing. Farmers who had failed to activate some or all of their entitlements in May 2005 discovered their loss only after they received their payment statements and asked RPA to explain. Even farmers who had received letters about dual claims had to wait for the payment statement to show whether RPA had applied penalties, and, of course, RPA were unable to pay the bulk of farmers by the end of March 2006, as planned. The first partial payments went out in May 2006.

## Inconsistent decision-making

<sup>333</sup> RPA's approach to dealing with the mistakes farmers had made in claim forms was inconsistent – between cases and in the assurances RPA had given the NFU. RPA had said that, in cases of genuine error, they would try to be flexible. In practice, RPA's appetite for being flexible ran out sooner than their customers might reasonably have expected from RPA's public statements, and without an explicit explanation to RPA customers of what was happening. We have seen RPA issuing guidance to staff on how to treat mistakes. But RPA have confirmed that processors and caseworkers applied different standards to similar cases, quite apart from the evidence we have seen when looking at the nine complaints. This meant RPA failed to treat people in similar situations consistently. A further layer of delays and errors made the inconsistency worse for some farmers, including some of the complainants in this report.

<sup>334</sup> Some farmers, such as Mr H, found that RPA said they would pay them, only to find that RPA

changed their mind later. Others, such as Mrs A, received payments, only to have RPA recover the money because they had paid it by mistake. And a further group of farmers, who also made mistakes, received payment and were able to keep it. This inconsistency was unfair.

## Summary

<sup>335</sup> In summary, what would 'Getting it right' and 'Being customer focused' have looked like for RPA – in an imperfect world where computer systems fail, deadlines are immovable and the experienced staff have already left the organisation? 'Getting it right' and 'Being customer focused' would have been RPA taking a step back to look again at what their customers could expect from them. Had they done so in the way my Principles set out, they would have done more than they did in terms of putting out additional guidance. They would also have tried to contact farmers who had submitted forms but claimed no SPS payment at all, and they would have done that within the time available to correct the claims.

<sup>336</sup> Taken together, RPA's many mistakes and shortfalls amounted to maladministration. RPA's handling of SPS claims in 2005 and 2006 fell short against several of my Principles, but in particular, they failed to 'get it right' and they failed to 'be customer focused'.

<sup>337</sup> In commenting on a draft of this report, the Defra Permanent Secretary said:

*'... in the first year (2005) of a new and complex scheme, where farmers were asked to make a vital one off application of entitlements, the absence of a claim for payment against any of those entitlements could have signalled that the claimant had misunderstood what was required in order*

*to receive a payment. A customer focused response would have been for RPA to double check the intentions of those farmers. However, where farmers had activated some of their entitlements, that demonstrates an understanding of a need to do so and double checking their intentions then goes beyond good customer care.'*

I am persuaded by the Permanent Secretary's argument on this issue.

**Second general finding of maladministration: RPA failed to respond appropriately when it came to 'Putting things right' for individuals affected by the failures of SPS 2005 and 2006**

- 338 RPA had an appeal process and a complaints process. Their position on remedy was, and is, that they make ex gratia payments where administrative error has had adverse effects on customers. This reflected HM Treasury's guidance for government departments, in 2005 and since 2005. The specific standard summarises RPA's position on ex gratia payments.
- 339 What would 'putting it right' have looked like? RPA would have scoped the problem they had identified properly; considered all the options available to them and made reasonable decisions, taking into account all relevant considerations.
- 340 Set against RPA's own standards, RPA failed to respond appropriately when it came to 'Putting things right' for individuals affected by RPA's failures in setting up SPS 2005. Let me explain why.
- 341 My first finding of maladministration focused on RPA's administrative mistakes in setting up and operating SPS before and after the first SPS deadline in May 2005. I am going to look

now at what went wrong once RPA began to see the growing evidence of how the troubled implementation of SPS had affected farmers. The facts in the chronology, summarised in the key facts section of this report, describe how RPA staff lacked a case management system that would give timely and accurate decisions on claims or all the relevant information for each claim; how their task-based computer system created unexpected backlogs of SPS 2005 work; and how experienced staff had left under voluntary severance terms just before RPA launched the new scheme. RPA repeatedly updated their guidance to staff on how to treat claims that had mistakes. It is far from surprising that staff failed to make consistent decisions in those circumstances.

**Scoping the problems**

- 342 What did RPA know about cases like Mrs A's? They were aware from April 2005 that some farmers were making mistakes on activation. By August 2006 they had put the figure of 11,000 on the number affected. They did not know how many of these claims reflected mistakes and how many reflected deliberate choices by farmers. They had given their staff guidance, updated several times, on identifying claims which might meet RPA's test for 'obvious error'. In August 2006 they knew they still had many claims which they did not feel able to pay within the EU Regulations. In RPA's own words: '*Misunderstanding the scheme rules is not the basis for obvious error*'.

**Considering the options**

- 343 And what did RPA do about these cases where claimants seemed to have misunderstood the SPS rules? They took a narrow view, which was at odds with their public statements in 2005. As I said in my first finding of maladministration,

RPA had linked genuine error with the scope for flexibility. In practice, RPA took a different approach. In October 2006 RPA's operational management team discussed three options for dealing with these cases. In the words of the operations director, they decided to hold a firm line and not review individual cases. They would check on the number of representations and appeals and take action to avoid the same non-activation problem arising again. That meant that they gave individual consideration only to people who challenged RPA.

<sup>344</sup> In looking at just these three options, RPA failed to consider how their own administrative error might have contributed to farmers' mistakes and misunderstandings. They then failed to consider how their guidance on ex gratia payments provided a route to remedy the effect of their administrative error. That was unfair.

### Good decision-making?

<sup>345</sup> This was poor decision-making. RPA decided to send the non-activation claimants down the appeal route. They should have been aware that that was unfair. And they held to their decision, despite internal concerns about it being unfair. In December 2006 a senior RPA lawyer refers in an email to the continuing concerns of the Interim Chief Executive (paragraphs 169 and A96). I have also noted the further concerns of RPA staff working on appeals – like the staff in RPA's Exeter office who looked at Mrs A's case in 2007 (paragraphs 185 and E13 and E14).

<sup>346</sup> The decision was at best ill-considered because it did not consider why misunderstandings had occurred. At worst, it was illogical. That is because the appeals system was set up to measure cases against the Regulations, not to deal with what RPA's policy paper had called

'*misunderstandings*'. The appeals process would fail to provide a remedy in the absence of a clear direction from management that there could be scope for ex gratia payments to remedy the injustice identified by the misunderstandings paper.

### RPA's failure to remedy

<sup>347</sup> RPA's approach to the non-activation cases throws light on their overall approach, for SPS 2005 and SPS 2006, when the nine complainants in this investigation raised problems with their SPS claims. RPA focused on the legalities and failed to consider the effects of their own administrative actions and/or omissions. As a result, they also omitted to consider how their own guidance on ex gratia payments might be the means to remedy the injustice they had identified. Statutory payments should be made before ex gratia payments are used. That does not mean stretching regulations beyond their properly intended reach. Where statutory payments are not due, because of administrative error by the public body, consideration should be given to the scope for making ex gratia payments.

<sup>348</sup> It is understandable that RPA had difficulty separating legal issues from administrative issues in considering complaints about SPS. Much of the legislation is about the administration of SPS. But RPA were the only body with the information and expertise to tell the difference between maladministration and the requirements of the law.

### Summary

<sup>349</sup> In summary, what would we have seen if RPA had acted without maladministration when they considered how to put things right for the problems with SPS 2005 and SPS 2006 claims?

They would have looked properly at the effects of their own errors and omissions on their customers. They would have considered all the options for remedy available to them, including the guidance on ex gratia payments.

350 RPA's October 2006 decision-making on the non-activation cases was so poor that, taken on its own, it was maladministrative. Taken together, their other administrative failings also amounted to maladministration. These were the poor information for farmers about decisions and payments; inconsistency in the decisions about claims; and the general failure to look properly at the effects on customers of RPA's own errors and omissions.

351 Again, RPA's actions on SPS fell short against several of my Principles, but in particular, they failed comprehensively to 'put things right'.

352 In commenting on a draft of this report, the Defra Permanent Secretary said:

*'I acknowledge and accept that there are a number of lessons for Defra and RPA in how it plans and executes significant changes in such schemes. That is relevant, in particular, to the forthcoming 2013 CAP reforms which the RPA will need to implement in due course and I will ensure that those responsible are aware of what needs to be done differently in future. I also accept that there is a need for more immediate changes in the way that the Agency considers the needs of disabled people and handles both complaints and appeals. I know [the Chief Executive of RPA] is determined to make early progress in these areas.'*

## Conclusion

353 In chapter five I have set out my general findings of maladministration, based on the evidence in my chronology in Annex A (which I have summarised in the key facts in chapter three) and on the evidence drawn from what happened in the cases of the nine complainants. In the next chapter I set out my findings of maladministration and injustice for the individual complainants.



# Chapter six

## My findings on each of the individual complaints:

- whether there was any maladministration by RPA in their handling of the Single Payment Scheme claims made by nine complainants; and
- whether that maladministration led to any injustice to any of the complainants.

## Introduction

354 I have explained my general findings of maladministration in chapter five. Each individual who complained to me was affected differently by RPA's maladministration, although the broad themes remain familiar. Some of the individuals were also affected by maladministration particular to their case. I set out here how my general findings affected each individual. I also set out any maladministration specific to their particular case. For each person, I have repeated the summary of complaint that appears in my introduction in chapter one.

## Mrs A

### The complaint Mrs A put to me

355 Mrs A complained that RPA provided poor quality guidance on how to complete applications, misdirected her about the status of her case, and otherwise provided poor quality advice and customer service. In particular, Mrs A complained that RPA declined to treat the errors she made in her 2005 SPS claim as 'obvious errors'. The errors meant Mrs A did not activate her entitlement. She further complained that RPA have been inconsistent in their decision about what represents 'obvious error' and that, having paid her £5,000 by mistake, recovered that overpayment.

## My findings of maladministration and injustice

356 Mrs A's mistake in her SPS 2005 claim was that she ticked a box to say she was not claiming a payment and then left blank the column of boxes that would have indicated that her intention was the opposite. Her claim fell straight into the maladministration that I identified in my first general finding in chapter five.

357 In earlier claims for subsidy, Mrs A had used RPA's claim checking service. Mrs A has said that that service had ended by the time of SPS 2005 and Defra and RPA have given us no documentary evidence that would suggest, when considered with the other evidence we have gathered, that her recollection was wrong. Without access to adequate written or spoken advice, Mrs A made the fundamental mistake in her claim forms of not activating her entitlements. RPA's initial checks on forms were not set up to catch this type of error, even if staff noticed the omission. And in Mrs A's case, it did not fit the courts' interpretation of 'obvious error'.

358 RPA also paid Mrs A part of her 2005 SPS claim by mistake, only to recover it later. She then became aware that they had paid her partner and her cousin their 2005 SPS claims, although they had made the same mistake as she had. These errors were examples of RPA's inconsistent handling of cases.

359 To sum up – Mrs A, as a result of RPA's maladministration, omitted to activate her 2005 SPS entitlements by mistake and had no chance to correct her error.

360 RPA's general maladministration also meant that they missed the chance to 'put things right' for Mrs A when they received her representations.

RPA focused on the legalities. They omitted to consider the effects of their own administrative actions and/or omissions on Mrs A's claim. In particular, RPA failed to consider whether the failings of the SPS 2005 Handbook, and the lack of adequate other help, influenced Mrs A when she completed her claim incorrectly. They also failed to consider whether their inadequate initial checks allowed her fundamental error to pass without comment. As a result, RPA failed to look at how the injustice caused could be remedied outside the Regulations, for example, by way of an ex gratia payment.

<sup>361</sup> Instead, Mrs A went through a lengthy appeal process that measured her case against the Regulations.

<sup>362</sup> RPA acted with maladministration in dealing with Mrs A's SPS 2005 claim. They failed to 'get it right', to 'put things right' and to 'be customer focused'.

## Injustice

<sup>363</sup> Had RPA handled Mrs A's 2005 SPS claim without maladministration, I believe she would have indicated in time that she did wish to activate her entitlements. She would therefore have received her SPS payment for 2005. Mrs A has suffered the financial loss of her 2005 SPS payments amounting to £13,281.27 (paragraph 33). She has also lost the use of that money since, in effect, the end of the SPS 2005 payment window in June 2006.

<sup>364</sup> RPA's maladministration in failing to 'put things right' means that Mrs A's loss has gone unremedied for longer than necessary.

<sup>365</sup> RPA's inconsistent handling of SPS claims was apparent to Mrs A and has caused her avoidable frustration.

<sup>366</sup> Mrs A lost a further £100 paying for an appeal when her case should have been dealt with as an administrative complaint.

<sup>367</sup> Mrs A has experienced distressing financial worries, inconvenience, frustration and outrage at her unfair treatment.

## Mr B

### The complaint Mr B put to me

<sup>368</sup> Mr B complained, through his agent Mr J, that RPA delayed notifying him that he would not be paid and also of the reasons for non-payment; misdirected him about the status of his particular case; provided poor quality guidance about how to complete applications that was sometimes ambiguous; and otherwise provided poor quality advice and customer service to him and his agent. In particular, he complained about RPA's failure to reply to his agent's correspondence in May 2005 and the shortcomings in RPA's guidance and provision of information that led his agent to request clarification from them. He complained that he has suffered financial loss and avoidable trouble and inconvenience.

### My findings of maladministration and injustice

<sup>369</sup> Mr B's mistake in his SPS 2005 claim was that he omitted to update his agent, Mr J, or RPA, after he agreed to let a pea contractor use some of his land to support a claim for fruit, vegetable and potato authorisations. The result was that Mr B and the contractor both claimed SPS on the same land and Mr B paid a penalty for a dual claim.

<sup>370</sup> My first general finding of maladministration talks about the poor quality of the 2005 SPS Handbook. For example, it did not answer the sort of local-interest queries that could arise in 2005 where a pea contractor was claiming the fruit, vegetable and potato authorisations on some of a farmer's land. The NFU, in an internal document that I quote in my account of Mr B's complaint, called the fruit, vegetable and potato regime '*almost unworkable*'; it was certainly not easy to understand. Although

Defra have made representations to the contrary, Mr J's account of using RPA's service has persuaded me that fruit, vegetable and potato entitlement questions were the type of query that, in previous years, RPA's local staff would almost certainly have understood and been able to answer.

<sup>371</sup> RPA's maladministration deprived Mr B of guidance and advice that would have allowed claimants and agents to clarify the (sometimes) complex situations of farmers dealing with pea contractors. In addition, had RPA replied to Mr J's letter to them of 12 May 2005, it is at least possible that he would have received enough information to alert Mr B to the risk of dual claims.

<sup>372</sup> To sum up – Mr B made a dual claim in SPS 2005 by mistake. As a result of RPA's maladministration, he did not understand that he had made a dual claim.

<sup>373</sup> RPA were inconsistent in dealing with Mr J's representations on Mr B's case. They led Mr B to believe that he would be paid for 2005. After they confirmed the penalty, they briefly reversed it before reimposing it. Mr J (and, through him, Mr B) were also aware of SPS claimants who made similar errors to Mr B's, but paid no penalty. Inconsistency is another part of my first general finding of maladministration. However, Mr B's own failure to update RPA, directly or through Mr J, also had a part in what went wrong in his claim.

<sup>374</sup> Mr B's case is a clear fit with my second general finding of maladministration about '*Putting things right*'. RPA failed to consider properly Mr B's complaint about their handling of his case. If they had, they might have told him that pursuing a complaint, or pursuing a complaint as well as appealing on points of

law, could be more suited to his concerns than a further appeal. I note that when RPA lawyers responded to Mr B's judicial review claim, they explained then how to pursue his complaint, apologised for the failure to respond to Mr J's letter of 4 August 2008 and offered to pay the costs he might have avoided if he decided not to pursue his judicial review claim.

<sup>375</sup> This offer by the lawyers was the exception. Generally, RPA focused on the legalities. They omitted to consider the effects of their own administrative actions and/or omissions. In particular, they failed to consider the effects of a poor SPS 2005 Handbook, and the lack of adequate other help in the first year of a complex scheme, or to respond adequately to the questions Mr J raised before the complaint reached me. As a result, RPA failed to look at how the injustice suffered by Mr B could be remedied outside the Regulations, for example, by way of an ex gratia payment.

<sup>376</sup> Instead, Mr B went through a lengthy appeal process that measured the case against the Regulations.

<sup>377</sup> RPA acted with maladministration in dealing with Mr B's SPS 2005 claim. They failed to 'get it right', to 'put things right' and to be 'customer focused'.

## Injustice

<sup>378</sup> RPA were maladministrative and Mr B has suffered an injustice. How far are the maladministration and the injustice connected?

<sup>379</sup> The dual claim arose because Mr B omitted to update his claim form after his conversation with the pea contractor. It would have been prudent, in the first year of a new scheme based on land use, to tell Mr J or RPA about the new agreement he had reached with the

pea contractor. Had Mr B done so before RPA contacted him, he could have corrected his claim without penalty.

<sup>380</sup> But RPA's maladministration has contributed to the injustice Mr B has suffered. Farmers in complex land relationships (and their agents) need high quality guidance. Mr B and Mr J had no authoritative source apart from the 2005 SPS Handbook and the customer service centre. Neither source was good enough. The injustice that RPA's maladministration caused for Mr B was the lost opportunity to have a full understanding of the specific rules for his type of farming. Mr B's omission (not updating RPA) mitigates the injustice.

<sup>381</sup> Mr B lost a further £100 paying for an appeal and seeking leave to apply for judicial review when his case should have been dealt with as an administrative complaint.

<sup>382</sup> Mr B has experienced outrage and frustration at the unfairness of RPA decision-making; and inconvenience, upset and avoidable expense flowing from almost five years of waiting – first for RPA to decide about the payment and then for them to look properly at the complaint.

## Mr C

### The complaint Mr C put to me

<sup>383</sup> Mr C complained that RPA failed to take decisions based on all relevant considerations because they failed to consider and respond adequately to all the documents submitted with his application form, and used standard letters which failed to cover all the issues raised, and provided poor quality advice and customer service. In particular he said that RPA failed to take proper account of his circumstances in their decision about the errors in his 2006 SPS claim; omitted to update his bank details in 2005, which meant his Entry Level Stewardship payment went to a closed bank account that he could not access; and have still to pay all of his 2007 entitlement. Mr C said that RPA's errors have caused him financial loss and significant anxiety.

### My findings of maladministration and injustice

<sup>384</sup> Mr C's mistake in his 2006 SPS claim was to believe that the preprinted land parcels on his form had already been activated and that, therefore, he did not need to do so. He also omitted to make any entry in part E of the claim form, which was also about activating entitlements. He had written a covering letter, but it referred only to the land parcel he had added himself. Mr C had made a successful claim in 2005 with the help of his adviser, but completed his 2006 claim on his own. RPA's guidance for farmers, the SPS 2006 Handbook, had improved. But Mr C, being deaf, was not in a position to take full advantage of the telephone advice offered by RPA's customer service centre – even if the customer service centre had been able to deal with his call.

<sup>385</sup> Here is a reminder, from the specific standard, of what the relevant Code of Practice said about good practice by service providers under the *Disability Discrimination Act 1995* and of what RPA's guidance said. The Code of Practice said:

*'The duty of reasonable adjustment is best met by the service provider trying to anticipate the types of problems which could arise and by training its employees to enquire rather than act on assumptions.'*

The Code acknowledged there might be situations where it was not reasonable for a service provider to anticipate a particular requirement. It also said that sometimes the changes needed might be *'little more than an extension of the courtesies which most service providers already show to their customers'*. Among other things, RPA's own guidance said: *'Our customers are in business and therefore it is for them to seek assistance for themselves.'*

<sup>386</sup> How does Mr C's 2006 SPS claim fit into the maladministration that I identified in my first general finding in chapter five? In particular, was it a serious mistake for RPA to process Mr C's claim without contacting him to check his intentions? In Mr C's case, RPA's failure to look into his 'partial activation' was not a serious mistake and not maladministration. It was reasonable for RPA to treat Mr C's field data sheet as properly completed, because he had activated some of his entitlements.

<sup>387</sup> RPA's guidance about initial checks was that staff should send claimants an SPV1 letter (the standard letter requesting more information on a claim) if part E of the claim form was blank. Separately, their guidance on contacting claimants was that staff should attempt to telephone claimants three times

before resorting to a letter. We have seen no evidence to suggest that RPA followed their guidance on either point in Mr C's case. That was maladministration, and falls within my first general finding of maladministration. But RPA had decided (in effect) that they would ignore errors in part E in 2006 (paragraph 218 and, in the glossary, the entry for 'validation'). Without any reason to correct part E, there was no trigger for RPA or Mr C to know that his partial activation had been a mistake.

388 I can see why it might seem clear to Mr C and his representative that in September and November 2006 RPA had an opportunity to correct his claim. (In September 2006 Mr C recalls telling RPA his 2006 claim was the same as for 2005; in November 2006 RPA sent him a summary of what areas he had established and activated in 2005.) Yet even if RPA had recognised Mr C's mistake in September or November, it was too late for them to correct his claim within the SPS regulations unless they believed it was 'obvious error', and they did not.

389 But another part of my first general finding of maladministration is the shortfall in RPA's service to customers with disabilities. In Mr C's case this meant they failed to anticipate the needs of customers with disabilities who might be disadvantaged by having to rely on telephone-based information to resolve queries about their claim forms. In his comments on a draft of this report, Mr C has told us that he attended an explanatory meeting in 2005, but was unable to hear the information given.

390 To sum up – RPA failed to anticipate how customers with disabilities, such as Mr C, might be disadvantaged in claiming SPS. That was maladministration and limited Mr C's opportunities to get his SPS claim right; although the evidence we have seen in this

investigation does not lead me to believe that the maladministration was the reason Mr C did not complete his 2006 claim form correctly.

391 RPA's maladministration also meant that they then missed the chance to 'put things right' for Mr C when they received his representations. I set out that maladministration in my second general finding in chapter five.

392 A letter from Mr C's adviser to RPA in January 2007 is the first explicit evidence we have seen of RPA being told that Mr C was deaf. However, we have spoken to Mr C ourselves. Anyone who spoke to Mr C in 2005 or 2006 would have realised that he was deaf, although the first record we have seen in which RPA noted this fact was in May 2007. It is clear to me that Mr C's rights under disability law were engaged here, but we have seen no evidence in their papers that RPA took their duties under disability discrimination legislation or the nature of Mr C's disabilities into account when deciding what sort of service they should be offering him or when making decisions about him. As a result, they did not properly consider his needs and did not ensure he had equal access to their service. RPA failed to 'get it right' here and it was for disability-related reasons.

393 I have identified the following mistakes that were specific to Mr C's complaint:

- Mr C had problems when he changed the bank account into which his SPS and Environmental Stewardship Scheme (see glossary) payments were paid. RPA failed to check whether Mr C had more than one SBI number. In August 2006, RPA accepted that they had made an error on the SBI number, but they changed their position when Mr C asked for compensation. It took more than

15 months for RPA to award Mr C £50 by way of apology.

- Mr C's other difficulty was about RPA's calculation of the common land allocation for the relevant common. RPA's replies to Mr C omitted to explain matters properly, and left him without confidence that they had paid his 2007 SPS claim accurately.
- Apart from the common land question, Mr C has had further difficulties in communicating with RPA about the land area covered by his SPS claim.

<sup>394</sup> These three areas were serious failures to 'get it right' and to 'be customer focused'.

<sup>395</sup> As in the other complaints in this investigation, RPA focused on the legalities of SPS. They omitted to consider the effects on Mr C's claim of their own administrative actions and/or omissions. As a result, RPA failed to look at how the injustice caused could be remedied outside the Regulations, for example, by way of an ex gratia payment.

<sup>396</sup> Instead, Mr C went through a lengthy appeal process that measured the case against the Regulations.

<sup>397</sup> RPA acted with maladministration in dealing with Mr C's SPS 2006 claim. They failed to 'get it right', to 'put things right' and to 'be customer focused'.

<sup>398</sup> As I note in chapter five, in commenting on a draft of this report, the Defra Permanent Secretary said: '*... where farmers had activated some of their entitlements, that demonstrates an understanding of a need to do so and double checking their intentions then goes beyond good customer care*'. She also said:

*'I have considered whether, if RPA had been more alive towards its responsibilities in dealing with the needs of disabled people, Mr C would have made the error he did. Given the error was based on partial activation, it is difficult to see how it would [have avoided the error].'*

### Injustice

<sup>399</sup> Had RPA acted without maladministration, Mr C would have had more choices in obtaining information about completing his SPS 2006 claim form. In addition, had RPA followed their guidance and contacted Mr C, they would have had a better chance of discovering Mr C's true intention for his 2006 SPS claim. I recognise that Mr C is sure that he would have activated all his entitlements. To me, the issue seems less clear cut than that. I cannot say, even on the balance of probabilities, what course any exchange between Mr C and RPA would have taken. I recognise that it is possible that Mr C's true intention would have been established, but it is also possible that it would not. In my view, the injustice to Mr C is that he will remain uncertain about whether or not, with a little more help from RPA, he would have received his full SPS payment for 2006. The injustice of this uncertainty is made worse by RPA's failure to take proper account of Mr C's disability.

<sup>400</sup> RPA's maladministration in failing to 'put things right' means that uncertainty about Mr C's position has persisted for longer than necessary.

<sup>401</sup> Mr C lost a further £100 paying for an appeal when his case should have been dealt with as an administrative complaint.

<sup>402</sup> Mr C told us that he incurred interest of £91.27 from 10 May to 27 July 2006 and a £50 overdraft arrangement fee. He has received an

ex gratia payment of £50 from RPA. I recognise that Mr C believes RPA should recover all the money paid to the incorrect bank account. However, I believe that RPA will be unable to do that without Mr C reaching agreement with the bank about the closed account. He has had the benefit of the money, to the extent that it is in an account that, although closed, was his to pursue. In my view, the injustice is that RPA have not yet engaged properly with Mr C about the full effect on him of the money going to the wrong account. In the absence of adequate and tailored explanation from RPA, Mr C also remains uncertain about what the correct payments of SPS should have been since the 2005 SPS claim year.

<sup>403</sup> RPA's failure to consider what adjustments they needed to make in Mr C's case contributed to the inconvenience, distress and frustration that he suffered.



## Mr D

### The complaint Mr D put to me

<sup>404</sup> Mr D complained that RPA provided poor quality guidance about how to complete applications that was sometimes ambiguous; were not ‘customer focused’ or ‘open and accountable’ because they delayed notifying him that he would not be paid; misdirected him about the status of his particular case; and otherwise provided poor quality advice and customer service. In particular, he complained that the guidance on completing the 2005 claim form was misleading; RPA took too long to give him a decision about his claim and then misled him into believing he would be paid. Mr D further complained that they failed to take proper account of his circumstances when he first disputed their decision and that RPA’s independent appeal panel was too closely guided by RPA staff. Mr D claimed that he has suffered financial hardship and anxiety as a result of RPA’s mishandling. He said his family, particularly his wife, have suffered significant stress. He said that he has increased his overdraft, sold land and taken on extra part-time work in order to meet the financial shortfall.

### My findings of maladministration and injustice

<sup>405</sup> Mr D misunderstood the 2005 SPS Handbook explanation of how to fill in the SPS claim form. He believed he should not attempt to activate his entitlements until after he had established them. This was a fundamental error in terms of making a successful claim to SPS. RPA’s initial checks on forms were not set up to catch this type of error, even if staff noticed the omission. And in Mr D’s case, the error did not fit the courts’ interpretation of ‘obvious error’. Mr D’s SPS 2005 claim fell straight into the

maladministration that my first general finding identified in chapter five.

<sup>406</sup> To sum up – Mr D, as a result of RPA’s maladministration, omitted to activate his 2005 SPS entitlements by mistake and had no chance to correct his error.

<sup>407</sup> RPA’s maladministration also meant that they were unable to give Mr D accurate information about the outcome of his claim when he asked about this payment. They then missed the chance to ‘put things right’ for Mr D when they received his representations. I set out that maladministration in my second general finding.

<sup>408</sup> RPA focused on the legalities. They omitted to consider the effects of their own administrative actions and/or omissions on Mr D’s claim. In particular, RPA failed to consider whether the failings of the SPS 2005 Handbook affected him when he completed his claim incorrectly. They also failed to consider whether their inadequate initial checks allowed his fundamental error to pass without comment. As a result, RPA failed to look at how the injustice caused could be remedied outside the Regulations, for example, by way of an ex gratia payment. Instead, Mr D went through a lengthy appeal process that measured his case against the Regulations.

<sup>409</sup> Mr D also complained that the appeal failed to look at his circumstances and that the panel was too closely guided by RPA staff. It seems to me that Mr D’s dissatisfaction on those points arose because RPA were using an inappropriate process to look at a complaint.

<sup>410</sup> RPA acted with maladministration in dealing with Mr D’s SPS 2005 claim. They failed to ‘get it right’, to ‘put things right’ and to ‘be customer focused’.

## Injustice

- 411 Had RPA handled Mr D's 2005 SPS claim without maladministration, I believe he would have indicated in time that he did wish to activate his entitlements. He would therefore have received his SPS payment for 2005. Mr D has suffered the financial loss of his 2005 SPS payments amounting to £7,745.39 (paragraph 33). He has also lost the use of that money since, in effect, the end of the SPS 2005 payment window in June 2006.
- 412 RPA's maladministration in failing to 'put things right' means that Mr D's loss has gone unremedied for longer than necessary.
- 413 Mr D lost a further £100 paying for an appeal when his case should have been dealt with as an administrative complaint.
- 414 Mr D has experienced considerable inconvenience, distress and frustration and has told us that his wife, particularly, became very depressed as the family dealt with the financial loss.

## Mr and Mrs E

### The complaint Mr and Mrs E put to me

415 Mr and Mrs E complained that RPA misdirected Mrs E when she asked them to clarify the RPA guidance, which they felt was incomprehensible, about claiming special entitlements in her 2005 SPS application. As a result, she altered her claim form and, in doing so, did not activate her entitlement for 2005. They complained that they have lost entitlement to payment for that year.

### My findings of maladministration and injustice

416 Mr and Mrs E needed to claim special entitlements under SPS 2005 in order to receive any money for that claim year. They failed to do so. Their SPS 2005 claim fell straight into the maladministration that I have identified in my first general finding in chapter five.

417 I believe Mrs E's account of being unable to decide how to complete the form from the 2005 SPS Handbook; of telephoning RPA; and of receiving incorrect advice. As a result of that inadequate advice from RPA, Mr and Mrs E made a mistake in their claim form. It was not a mistake that RPA's initial checks would pick up, even if staff noticed it. The mistake also fell outside the courts' interpretation of 'obvious error'.

418 To sum up – Mr and Mrs E, as a result of RPA's maladministration, omitted to activate their 2005 SPS entitlements by mistake and had no chance to correct their error.

419 RPA's maladministration also meant that they missed the chance to 'put things right' for Mr and Mrs E when they received their representations. I describe that maladministration in my second general finding.

420 RPA focused on the legalities. They omitted to consider the effects of RPA's own administrative actions and/or omissions on Mr and Mrs E's claim. In particular, RPA failed to consider whether the failings of the SPS 2005 Handbook, and the lack of adequate other help, influenced Mrs E when she completed her claim incorrectly. Their approach was to dismiss her complaint of misdirection because they could find no record of a telephone conversation with her. RPA also failed to consider whether their inadequate initial checks allowed her fundamental error to pass without comment. As a result, RPA failed to look at how the injustice caused could be remedied outside the Regulations, for example, by way of an ex gratia payment.

421 Instead, Mr and Mrs E went through a lengthy appeal process that measured the case against the Regulations.

422 RPA acted with maladministration in dealing with Mr and Mrs E's SPS 2005 claim. They failed to 'get it right', to 'put things right' and to 'be customer focused'.

### Injustice

423 Had RPA handled Mr and Mrs E's 2005 SPS claim without maladministration, I believe they would have activated their entitlements. They would therefore have received their SPS payment for 2005. Mr and Mrs E have suffered the financial loss of their 2005 SPS payments amounting to £5,183.99 (paragraph 33). They have also lost the use of that money since, in effect, the end of the SPS 2005 payment window in June 2006.

424 RPA's maladministration in failing to 'put things right' means that their loss has gone unremedied for longer than necessary.

425 Mr and Mrs E lost a further £100 paying for an appeal when their case should have been dealt with as an administrative complaint.

426 Mr and Mrs E have experienced considerable inconvenience, distress and frustration. In particular, they were unable to manage their farm without the funds to pay for extra help. Only their son's intervention allowed them to continue.

## Mr F

### The complaint Mr F put to me

427 Mr F complained that RPA failed to take all relevant considerations into account when they decided to penalise him following his overdeclaration of land in his 2005 SPS application. Mr F complained that he has suffered a financial loss.

### My findings of maladministration and injustice

428 Mr F's mistake in his SPS 2005 claim was that he went through RPA to resolve a doubt about what land he should include in his SPS claim. His landlord had died, which ended what Mr F has called a 'gentleman's agreement' on some grazing land. Mr F felt unable to resolve matters with the agent for his late landlord's estate. Bear in mind also the information in the letter to Mr F's GP, which RPA received in April 2005. RPA may have been unaware of Mr F's overall health conditions, such as his stroke. But they did have this letter, which said that Mr F had had exposure to organophosphate pesticides and that chronic fatigue syndrome and neurological damage were among the possible effects of exposure to organophosphate pesticides. Mr F's SPS 2005 claim fits into the maladministration that my first general finding identified in chapter five because of the way RPA dealt with the evidence he gave them about his health problems.

429 Here is a reminder, from the specific standard, of what the relevant Code of Practice said about good practice by service providers under the *Disability Discrimination Act 1995* and of what RPA's guidance said. The Code of Practice said:

*'The duty of reasonable adjustment is best met by the service provider trying to anticipate the types of problems which could arise and by training its employees to enquire rather than act on assumptions.'*

The Code acknowledged there might be situations where it was not reasonable for a service provider to anticipate a particular requirement. It also said that sometimes the changes needed might be *'little more than an extension of the courtesies which most service providers already show to their customers'*. Among other things, RPA's own guidance said: *'Our customers are in business and therefore it is for them to seek assistance for themselves'*.

430 I am satisfied that Mr F met RPA staff to talk about his circumstances and that he wrote RPA a letter in May 2005 explaining the possible dual claim. Mr F has given a credible account, and RPA's records include letters in which Mr F refers to his meetings with RPA staff. RPA's records do not include the letter in which Mr F set out several fields that might be claimed by his late landlord's estate. But even if RPA had logged his letter in May 2005, Mr F had omitted one field that was large enough to trigger the maximum dual claim penalty.

431 However, Mr F's covering letter for his SPS claim form could not have been plainer. He said his farm had been poisoned and he had picked up the poison himself from the cattle. He said: *'I do not know how to do the single farm payment scheme because it is difficult to run a business with so much worry'*. Separately, RPA had received written evidence of Mr F's health problems in April 2005. I believe it would have been reasonable at this stage for RPA to treat Mr F as someone who might need extra support with his SPS claim.

432 RPA also misdirected Mr F about his payment for 2005. While penalties had been applied to his claim that had reduced his payment to nil, they did not tell him about this until the end of December 2006. They also gave him confusing messages about his 2006 payment.

433 To sum up – RPA failed to recognise how their duties under the *Disability Discrimination Act 1995* might affect their handling of Mr F's claim. Mr F, as a result of RPA's maladministration, did not have the opportunity to correct mistakes which led to his penalties. In saying that, I am not ignoring Mr F's responsibility to find out all the relevant facts he needed in order to make an accurate SPS claim.

434 RPA's general maladministration also meant that they missed the chance to 'put things right' for Mr F when they received his representations. It would have been reasonable for RPA to have taken into account their failure to respond flexibly to his request for help. As in the other complaints in this investigation, RPA focused on the legalities. Mr F gave RPA more evidence about his health in his representations about his claim. It would have been reasonable at this stage for RPA to have treated him as someone who was likely to fall within the terms of disability discrimination legislation.

435 RPA omitted to consider the effects on Mr F's claim of their own administrative actions and/or omissions – notably, their failure to anticipate how his health problems might affect his dealings with them. As a result, RPA failed to look at how the injustice caused could be remedied outside the Regulations, for example, by way of an ex gratia payment.

436 Instead, Mr F went through a lengthy appeal process that measured the case against the Regulations.

437 RPA acted with maladministration in dealing with Mr F's SPS 2005 claim. They failed to 'get it right', to 'put things right' and to 'be customer focused'.

### Injustice

438 Mr F could have done more to avoid the mistakes which led to penalties. But RPA failed to act on the information they had about Mr F's needs. Had RPA done so, I believe they would have understood what he was trying to tell them. It follows that, in the absence of RPA's maladministration, it is unlikely that Mr F would have been penalised on his 2005 SPS claim. As a consequence of the maladministration, he has lost the money he would have received for SPS 2005. He has also lost the use of that money from the end of the SPS payment window for the 2005 claim year.

439 RPA's maladministration in failing to put things right means that Mr F's loss has gone unremedied for longer than necessary.

440 Mr F lost a further £100 paying for an appeal when his case should have been dealt with as an administrative complaint.

441 RPA's failure to consider what adjustments they needed to make in Mr F's case contributed to the inconvenience, distress and frustration that he suffered.

## Mr G

### The complaint that Mr G put to me

<sup>442</sup> Mr G complained that RPA provided poor quality guidance about how to complete applications that was sometimes ambiguous; were not ‘customer focused’ or ‘open and accountable’ because they delayed notifying him that he would not be paid and also the reasons for non-payment; misdirected him about the status of his particular case and otherwise provided poor quality advice and customer service to him. In particular, he complained that:

- RPA’s guidance about completing the 2005 claim form was misleading;
- they made avoidable errors in processing his claim;
- they took too long to give him a decision about payment of his claim; and
- during that time, misled him into believing he would be paid.

<sup>443</sup> He further complained that RPA failed to take proper account of his circumstances when he disputed their decision; and their independent appeal panel was too closely guided by RPA staff. Without the SPS payment of about £2,642, Mr G had to support the farm with money from his other work and by making household economies. He complained that he and his family have suffered a great deal of worry and uncertainty and he has not been able to have a holiday for two years.

### My findings of maladministration and injustice

<sup>444</sup> Mr G’s SPS 2005 claim fell straight into the maladministration that my first general finding

identified in chapter five. Like Mr D, another of the nine complainants, he misunderstood the 2005 SPS Handbook. As a result, Mr G made mistakes in his claim forms. The mistakes did not fit the courts’ interpretation of ‘obvious error’. At the checking stage, in early May 2005, RPA had returned Mr G’s claim to him so he could endorse some changes. But they omitted to tell him that he had not activated his entitlements.

<sup>445</sup> Among other examples of poor handling in Mr G’s 2005 SPS claim, RPA paid him some of his SPS 2005 claim by mistake.

<sup>446</sup> To sum up – Mr G, as a result of RPA’s maladministration, omitted to activate his 2005 SPS entitlements by mistake and had no chance to correct his error.

<sup>447</sup> RPA’s maladministration also meant that they were unable to give Mr G accurate information about the outcome of his claim when he asked about this payment. They missed the chance to ‘put things right’ for Mr G when they received his representations. I have explained that maladministration in my second general finding.

<sup>448</sup> For Mr G, as for the other complainants in this investigation, RPA focused on the legalities. They omitted to consider the effects of their own administrative actions and/or omissions on Mr G’s claim. In particular, RPA failed to consider whether the failings of the 2005 SPS Handbook, and the lack of adequate other help, influenced Mr G when he completed his claim incorrectly. They also failed to consider whether their inadequate initial checks allowed his fundamental error to pass without comment. As a result, RPA failed to look at how the injustice caused could be remedied outside the Regulations, for example, by way of an *ex gratia* payment.

- 449 Instead, Mr G went through a lengthy appeal process that measured the case against the Regulations.
- 450 Mr G also complained that the appeal failed to look at his circumstances and that the panel was too closely guided by RPA staff. It seems to me that his dissatisfaction on those points arose because RPA were using an inappropriate process to look at a complaint.
- 451 RPA acted with maladministration in dealing with Mr G's SPS 2005 claim. They failed to 'get it right', to 'put things right' and to 'be customer focused'.

## Injustice

- 452 Had RPA handled Mr G's 2005 SPS claim without maladministration, I believe he would have been able to clarify that he did wish to activate his entitlements. He would therefore have received his SPS payment for 2005. Mr G has suffered the financial loss of his 2005 SPS payments amounting to £2,088.42 (see paragraph 33). He has also lost the use of the money since, in effect, the end of the SPS 2005 payment window in June 2006.
- 453 RPA's maladministration in failing to put things right means that Mr G's loss has gone unremedied for longer than necessary.
- 454 Mr G lost a further £100 paying for an appeal when his case should have been dealt with as an administrative complaint.
- 455 RPA's inconsistent handling of SPS claims was apparent to Mr G and contributed to his frustration.
- 456 Mr G has experienced considerable inconvenience, distress and frustration.



Mr H

### The complaint Mr H put to me

<sup>457</sup> Mr H complained that RPA failed to take decisions based on all relevant considerations; were not ‘customer focused’ or ‘open and accountable’ because they delayed telling him that he would not be paid and also the reasons for non-payments; that they misdirected him about the status of his case; that they provided poor quality guidance about how to complete applications and that they otherwise provided him with poor quality advice and customer service. In particular, Mr H complained that RPA’s guidance about completing the 2005 claim form was inadequate and they took too long to give him a decision about his claim. He further complained that they accepted his failure to activate was an ‘obvious error’, only to reverse their decision a year later. He said he has suffered financial loss because of RPA’s mistakes; bought new farm machinery for £15,000 after they told him they would treat his mistake as ‘obvious error’; and has suffered stress and anxiety.

### My findings of maladministration and injustice

<sup>458</sup> Mr H knew what he needed to do to complete his 2005 SPS claim form successfully. He activated some entitlements. His mistake was to overlook a full page of entitlements on his claim form.<sup>57</sup> He established them, but omitted to activate them. Those entitlements made up most of his claim. RPA’s initial checks on claim forms would not have picked up Mr H’s error and RPA staff would not have contacted him, even if they had noticed the anomaly. It would have been better if RPA had contacted Mr H,

but their failure to do so was not a serious error and does not amount to maladministration.

<sup>459</sup> As I have described in chapter five, in commenting on a draft of this report, the Defra Permanent Secretary said:

*‘... in the first year (2005) of a new and complex scheme, where farmers were asked to make a vital one off application of entitlements, the absence of a claim for payment against any of those entitlements could have signalled that the claimant had misunderstood what was required in order to receive a payment. A customer focussed response would have been for RPA to double check the intentions of those farmers. However, where farmers had activated some of their entitlements, that demonstrates an understanding of a need to do so and double checking their intentions then goes beyond good customer care.’*

I am persuaded by the Permanent Secretary’s argument on this issue.

<sup>460</sup> The maladministration that I have identified in my first general finding of maladministration in chapter five did affect Mr H, however. RPA told Mr H, in writing, that they would treat his mistake as ‘obvious error’. They did this in September 2006, but his repeated contact with them failed to obtain payment. Almost a year after their letter, they told him their decision to treat his mistake as ‘obvious error’ had been wrong. RPA’s actions here fit into the picture behind my general finding of maladministration: their decision making was inconsistent and they failed to give farmers accurate, or timely, information about the outcome of their claims.

<sup>57</sup> The 12 fields on this sheet made up about 68ha of Mr H’s holding. On the summary page of the field data sheet (which was for farmers’ own use and not part of the claim) he had written that he was applying to establish entitlements for 93.33ha and to activate entitlements for 7.50ha. That figure was anomalous. The figure of 7.50ha was the amount of his set-aside. He had activated 17.70ha.

<sup>461</sup> To sum up – Mr H omitted to activate all his 2005 SPS entitlements by mistake and he was unable to correct his error in time to obtain full payment within the SPS rules. RPA’s maladministration played no part in that. But it was maladministration by RPA that led Mr H to believe, for 12 months, that they would pay him.

<sup>462</sup> RPA also failed to ‘put things right’ for Mr H. Their handling of his representations and appeal fits into the maladministration I identified in my second general finding of maladministration.

<sup>463</sup> As in the other complaints in this investigation, RPA focused on the legalities when they looked at Mr H’s representations. They omitted to consider the full effects on Mr H’s claim of their own administrative actions and/or omissions. In particular, RPA failed to consider whether their inadequate initial checks allowed Mr H’s fundamental error to pass without comment. They also failed to consider fully how their late and inaccurate information had affected him. It is possible that Mr H would have committed himself to spending £15,000 on farm equipment in 2007-08 with or without his full SPS 2005 payment. We have seen no evidence that RPA even asked Mr H to give them documentary evidence of when he bought the equipment or how much it cost. Instead, they offered him a payment of £500 by way of apology after his unsuccessful appeal. He refused it. There was no investigation of how their misdirection influenced Mr H’s actions or fully argued rationale for deciding against further compensation than the £500.

<sup>464</sup> Mr H went through a lengthy appeal process that measured the case against the Regulations. Mr H’s comments on a draft of this report, and the comments made about his state of mind by people who have known him throughout this time, speak to the burden placed on Mr H first

by the uncertainty of his position; then by his regret and frustration about making a decision without accurate information about the money he had to spend; and finally by the anxiety of having to re-budget to accommodate his changed finances (paragraphs E250 and E251).

<sup>465</sup> RPA acted with maladministration in dealing with Mr H’s SPS 2005 claim. They failed to ‘get it right’, to ‘put things right’ and to ‘be customer focused’.

### Injustice

<sup>466</sup> Had RPA handled Mr H’s 2005 SPS claim without maladministration, Mr H would have received prompt and accurate information about the amount of his 2005 SPS claim. Instead, he had to deal with inconsistent messages from RPA, on top of the financial strain imposed by his mistake.

<sup>467</sup> RPA’s maladministration in failing to put things right meant that the uncertainty about Mr H’s true financial position continued for longer than necessary and that he made a significant decision about investing in farm machinery for his business without accurate information on his 2005 subsidy payment. In commenting on a draft of this report, the Defra Permanent Secretary said: *‘I believe it was unacceptable for [Mr H] to be left under the impression for a year that he would be paid before the Agency reversed his decision’.*

<sup>468</sup> Mr H lost a further £100 paying for an appeal when his case should have been dealt with as an administrative complaint.

<sup>469</sup> Mr H has experienced considerable inconvenience, distress and frustration.

## Mr I

### The complaint Mr I put to me

<sup>470</sup> Mr I complained that RPA failed to take decisions based on all relevant considerations because they failed to consider and respond adequately to all the documents submitted with application forms or used standard letters which failed to cover all the issues raised; were not ‘customer focused’ or ‘open and accountable’ because they delayed notifying him that he would not be paid; misdirected him about the status of his particular case; and gave him poor quality advice and customer service. In particular, Mr I complained that RPA’s failure to produce an accurate set of maps for his land prevented him from making a complete 2006 SPS claim. He further complained that they failed to reply to some of his letters about the problems with his claim; they told him they had accepted his late claim, without penalty, but then changed their mind; and, during the appeal process, they failed to explain the reasons for their changed decision on his entitlement. Mr I said RPA’s errors have caused him financial loss and avoidable upset.

### My findings of maladministration and injustice

<sup>471</sup> Mr I’s problems arose with his 2006 SPS claim. He wanted to be sure his form was accurate before he submitted it, but he was unable to obtain the information he needed from RPA. His 2006 claim fell into the general maladministration I set out in my first general finding in chapter five.

<sup>472</sup> The problems arose from RPA’s trouble with the Rural Land Register and their trouble with answering telephone calls or letters in 2005 and in 2006. Even a year after the February 2005

opening of the customer service centre, RPA were not able to answer Mr I’s calls.

<sup>473</sup> RPA also failed to follow their own guidance. From September 2005, this said that RPA staff should make three attempts to telephone the claimant before writing to him or her. We have seen no evidence that RPA even attempted to telephone Mr I in the period when it mattered. This was the period between 26 April 2006, when RPA received his first SPS 2006 claim form, up to the point when penalties would apply. Generally, that would have been 31 May 2006, but RPA had more time to answer Mr I in the 2006 claim year – until 15 June (inclusive).

<sup>474</sup> Had RPA spoken to Mr I about his letters, or provided a set of maps when he asked for them in February and in April 2006, it seems to me that Mr I would have made a complete claim within the deadline. Instead, RPA’s customer service centre was unavailable when he called it and they did not deal adequately with his letters until August 2006.

<sup>475</sup> To sum up – Mr I, as a result of RPA’s maladministration, was unable to submit a complete and accurate SPS 2006 claim within the SPS deadline.

<sup>476</sup> RPA were also inconsistent in their decision making in Mr I’s case. They told him in August 2006 they could accept his late claim. They then told him they could not pay him – only to send him half of what he would have been entitled to in February 2007.

<sup>477</sup> RPA’s maladministration also meant that they missed the chance to ‘put things right’ for Mr I when they received his representations. I set out that maladministration in my second general finding in chapter five.

478 As in the other complaints in this investigation, RPA focused on the legalities. They omitted to consider the effects on Mr I's claim of their own administrative actions and/or omissions – notably, their failure to give him a timely and adequate reply to his letters. As a result, RPA failed to look at how the injustice caused could be remedied outside the Regulations, for example, by way of an *ex gratia* payment. He went through a lengthy appeal process that measured the case against the Regulations.

479 RPA acted with maladministration in dealing with Mr I's SPS 2006 claim. They failed to 'get it right', to 'put things right' and to 'be customer focused'.

## Injustice

480 Did Mr I's responsibility to understand how to claim outweigh, or at least match, RPA's responsibility to get it right and be customer focused when he contacted them in March to May 2006? In my view, Mr I took the actions I would expect of a citizen doing his part in working with a public body. He tried to find out the data he needed and, in doing that, he gave RPA the chance to tell him what he should do.

481 It seems to me that Mr I was justifiably cautious in declining to sign the declaration about the accuracy of his claim until he was confident about the information he had used to complete it. Had he overclaimed, it is likely that he would have been penalised. It follows that Mr I has been unjustly denied full payment of his 2006 SPS claim amounting to £11,479.13 (paragraph 33), after taking account of the amount RPA paid him by mistake in 2007. He also lost entitlement to top-ups of his SPS payments from the National Reserve. He also lost the use of that money from, in effect, the end of the SPS 2006 payment window in June 2007.

482 Mr I paid £100 for an appeal when his case should have been dealt with as an administrative complaint. He suffered further confusion, because RPA paid him almost £15,000 by mistake for 2006. (It is not clear how much of that, if any, RPA have recovered from him.) He was concerned about the effect of the financial uncertainty on his staff.

483 Mr I has experienced considerable inconvenience, distress and frustration.

## Conclusion

484 In chapter six I have set out my findings of maladministration and injustice for each of the nine complainants. In chapter seven I make my recommendations for remedying the injustice I have found.

# Chapter seven

## My recommendations for remedy

485 Before I make my recommendations for remedy, I should summarise the factors that I have considered.

486 My Principles for Remedy include apologies, explanations and remedial action as things to consider in *'Putting things right'*. They also include compensation for financial loss, for the loss of use of the money foregone and for the costs of pursuing a complaint. A further category of financial payment is compensation for the non-cash effects of inconvenience and distress.

487 *'Acting fairly and proportionately'* means remedies should be fair, reasonable and proportionate. It also means it is reasonable to take into account any way in which a complainant has contributed to, or prolonged, the injustice.

488 How do the Principles play out in these nine complaints about RPA?

## Apologies, explanations and remedial action

- All the complainants need apologies and all need explanations of what money is due to them from RPA. For example, Mr C needs further explanation of RPA's treatment of his common land. Mr F needs further explanation of what RPA have paid him and why.

## Compensation for financial loss and loss of use of the money foregone

- In seven of the complaints, I have found that some or all of the loss of SPS, and any other subsidy dependent on payment of SPS in the year of that loss, was in consequence of RPA's maladministration.

- The loss of use of the SPS payment was a further financial loss, measurable by an annual interest rate.
- In some cases, the main loss dates from the 2005 payment window of 1 December 2005 to 30 June 2006. In another case it dates from the 2006 payment window of 1 December 2006 to 30 June 2007. I have considered whether or not to date the loss of SPS from a point within the payment window. In this instance, I have decided that it is proportionate to date the payments for loss of use from the end of the payment window. That is because of the relatively small sums involved and because of the significant work entailed in establishing when RPA would have paid the complainants, in the absence of maladministration.
- In calculating the remedy due to the complainants, RPA also needed to review what overpayments they made to them and how much they have recovered from them.
- RPA will also need to consider any representations about costs connected with the maladministration I have identified, such as bank charges. In Mr H's case, he made a financial commitment – not realising that he was without accurate information on his SPS 2005 payment.
- All nine complainants paid £100 to appeal. I have found that that cost was unnecessary.
- Mr B also sought to judicially review RPA's decision on his appeal. That was unnecessary.
- There were postage costs, and the cost in time away from work, in pursuing the appeal. I have taken those into account in my recommended compensation for inconvenience and distress.

## Compensation for inconvenience and distress

489 The people in each of the nine complaints suffered different effects from the maladministration that I have found, as their stories make clear. I have taken that into account in considering the inconvenience and distress that each complainant suffered.

490 For example, in Mr B's complaint, I have found that the farmer's own actions contributed significantly to the events that led RPA to apply a penalty to his SPS claim. However, RPA's maladministration was also a factor in what happened to him. RPA need to compensate Mr B for the particular effect on him of their maladministration.

491 Each complainant's story had particular elements that were exacerbated by the Agency's maladministration: sickness, bereavement, mounting money worries, the physical difficulty of managing a farm as a person grows older, or the responsibility owed to employees. The decision about compensation for inconvenience and distress is not an exact science. I have resisted the urge to use different amounts for inconvenience and distress as a means of distinguishing between the cases. Making such distinctions suggests that I can calibrate these recommendations to reflect precise degrees of suffering. I cannot. In some ways, all these people were caught up in the same story and my recommended compensation reflects that.

## My recommendations for remedy

492 The Defra Permanent Secretary accepted my recommendations.

493 We asked RPA to check the calculations for each complainant's SPS claim, so that the figures used in our recommendations for remedy included the effect of items such as modulation and any amounts paid by mistake and later recovered. These figures will differ from the headline figures suggested by the euro amounts in claimants' entitlement statements.

494 My **first recommendation** is that the Permanent Secretary of Defra should send each of the nine complainants a personal, written apology which acknowledges the maladministration that occurred in his or her case and the injustice that resulted. This should be sent to them within one month of the date of my final report.

495 My **second recommendation** is that Defra and RPA should pay Mrs A £13,281.27 – the sum she would have received for SPS 2005 had she activated her entitlements, within two months of the date of my final report, in recognition of the financial loss that flowed from the maladministration I have identified.

496 My **third recommendation** is that Defra and RPA should pay Mr B £1,000, within two months of the date of my final report, by way of apology for losing him the opportunity to have adequate information at the right time. They should also reimburse the reasonable costs flowing from his attempted judicial review.

497 My **fourth recommendation** is that Defra and RPA should compensate Mr C, within two months of the date of my final report, for the effect on him of the maladministration I have identified in their handling of his 2006 claim to SPS. This injustice was worsened by RPA's failure to take proper account of his disability.

The Permanent Secretary offered to pay Mr C 50 per cent of the SPS payment he had missed, giving an amount of £3,635.39<sup>58</sup>. In my view that provides an appropriate remedy for the uncertainty he has suffered in consequence of maladministration. RPA should also engage with Mr C about reimbursing him for the costs he incurred after RPA used the wrong bank account for his 2005 support payments.

<sup>498</sup> My **fifth recommendation** is that Defra and RPA should pay Mr D £7,745.39 – the sum he would have received for SPS 2005 had he activated his entitlements, within two months of the date of my final report, in recognition of the financial loss that flowed from the maladministration I have identified.

<sup>499</sup> My **sixth recommendation** is that Defra and RPA should pay Mr and Mrs E £5,183.99 – the sum they would have received for SPS 2005 had they activated their special entitlements, within two months of the date of my final report, in recognition of the financial loss that flowed from the maladministration I have identified.

<sup>500</sup> My **seventh recommendation** is that Defra and RPA should pay Mr F £9,278.09<sup>59</sup> – the sum he would have received for SPS 2005 had he claimed correctly, within two months of the date of my final report, in recognition of the financial loss that flowed from the maladministration I have identified.

<sup>501</sup> My **eighth recommendation** is that Defra and RPA should pay Mr G £2,088.42 – the sum he would have received for SPS 2005 had he

activated his entitlements, within two months of the date of my final report, in recognition of the financial loss that flowed from the maladministration I have identified.

<sup>502</sup> My **ninth recommendation** is that Defra and RPA should pay Mr H £500 in recognition of the upset he suffered because of their maladministration in telling him incorrectly that he would be paid in full for SPS 2005 and taking a year to correct their mistake. As well as paying this £500 (and the £500 in my thirteenth recommendation), Defra and RPA should look closely at whether, in the light of my Principles for Remedy and their understanding of farming businesses, they should compensate Mr H further for the effect on him of having inaccurate information when he decided to replace his combine harvester. They should send me, Mr H and the Member the reasons for their decision. They should do that within two months of the date of my final report.

<sup>503</sup> My **tenth recommendation** is that Defra and RPA should pay Mr I £11,479.13<sup>60</sup> – the sum he would have received for SPS 2006 had he submitted his claim within the SPS deadline, within two months of the date of my final report, in recognition of the financial loss that flowed from the maladministration I have identified.

<sup>504</sup> My **eleventh recommendation** is that Defra and RPA refund the £100 fee that each of the complainants paid to complete RPA's appeal process. They should do that within two months of the date of my final report.

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<sup>58</sup> Defra and RPA's calculations put Mr C's total 2006 SPS payment at £8,474.18. He received £1,203.41 in 2007, as a result of what he had claimed. That left an estimated financial loss of £7,270.77. Half of that is £3,635.39.

<sup>59</sup> Mr F claimed 25.04ha in 2005 and 22.24ha of that was dual claimed. A further 0.7ha was ineligible for SPS. His correct and activated land area for SPS 2005 was 2.8ha.

<sup>60</sup> The total payment due to Mr I was £26,285.22, but RPA have confirmed that they paid him £14,806.09 on 19 February 2007 and have not recovered that payment.

505 My **twelfth recommendation** is that Defra and RPA should compensate the complainants for the costs associated with being deprived of the use of the relevant SPS payment. For simplicity, that compensation should take the form of interest from the end of the relevant payment window, unless the complainant demonstrates to Defra and RPA that they incurred greater losses. RPA and Defra should do that within two months of the date of my final report.

506 My **thirteenth recommendation** is that Defra and RPA should pay each of the nine complainants £500 in recognition of the inconvenience, distress, and frustration they experienced in consequence of the maladministration I have identified. They should do that within two months of the date of my final report.

507 My **fourteenth recommendation** is that RPA should give each of the complainants an up-to-date statement summarising the money paid to and recovered from him or her since the start of SPS, and any other information which RPA consider relevant to his or her understanding of his or her financial position. In Mr C's case, they should give him a full explanation of the land areas used to calculate his SPS payment and of reasons for the change in his common land rights, and if necessary, visit him. In Mr F's case, they should give him a full explanation of the payments he has received and, if necessary, meet him. In Mr I's case, RPA should tell him how his SPS claim stands in terms of any payments from the National Reserve. In each case, RPA should make good any further shortfall they identify between what the complainants have received in SPS and what they should have received. They should do this within three months of the date of my final report.

508 My **fifteenth recommendation** is that Defra and RPA should give me an action plan, copied to the complainants, their representatives and the Members, setting out the systemic changes they have made, or are making, that address the maladministration my investigation has found. They should do that within two months of the date of my final report.



Ann Abraham  
**Parliamentary and Health Service Ombudsman**

September 2011



# Annex A: Understanding RPA's approach to claims to the Single Payment Scheme: an administrative chronology

## Before CAP reform

### RPA starts work in 2001

A1 RPA was established in October 2001 as an executive agency of Defra. It replaced the Regional Services Group of Defra and the Intervention Board for Agricultural Produce. RPA became the accredited European Union (EU) paying agency for Common Agricultural Policy (CAP) schemes in England.<sup>61</sup> In January 2010 RPA had 3,390 full-time staff and paid a total of about £1.86 billion in SPS payments to around 106,000 farmers.

A2 A review of government spending in 2000 had released £130 million for streamlining the system of administering claims under the CAP. RPA started a 'change programme' in 2001 in order to do that. It was due to finish by the end of 2004. The aims of the programme were to:

- ensure 95 per cent electronic delivery capability for CAP schemes by 2004, with the facility for electronic submission of claims for all schemes;
- reduce the cost of CAP administration and the risk of disallowance;
- reduce the average time taken by a claimant to complete a claim for CAP payment;
- pay all valid claims submitted electronically within two weeks of the start of the payment window (or three weeks from the date of receipt where no payment window existed); and

- improve the level of staff and customer satisfaction, measured in annual surveys, by 5 per cent per annum.<sup>62</sup>

A3 In April 2003 the House of Commons Environment, Food and Rural Affairs Committee reported on RPA. Their report, and the evidence from RPA senior managers, covered problems with late payment of subsidy to farmers, the risks of information technology and poor customer relations – including the effect of mistakes by farmers in claim forms.

### Drop-in centres

A4 The changes included cutting the number of RPA offices and centralising the processing of claims. On 18 December 2001 RPA's operations director minuted the Minister and senior managers in Defra and RPA about using drop-in centres, which offered face-to-face information to farmers, particularly in the run-up to some claim deadlines. He noted that Ministers and the RPA had assured farmers that RPA would continue to offer face-to-face contact, at least until 2004. He recommended that RPA should provide a basic level of service at sites from which work had transferred. He said that farmers were used to calling at RPA offices to deliver forms or 'seek advice', particularly in rural areas. But RPA had found the quality and timeliness of claims was unchanged when farmers had been unable to call at RPA offices because of restrictions resulting from foot and mouth disease. He said that newly-established drop-in centres simply

<sup>61</sup> The European Commission (EC) is responsible for the central administration of the CAP schemes. The UK government funds the subsidies, then reclaims the money from the EC.

<sup>62</sup> From the April 2003 report on the Rural Payments Agency by the House of Commons Environment, Food and Rural Affairs Committee.

acknowledged forms before sending them on for processing and:

*'If we were to attempt a replication of the previous service we would have to either increase the staffing again, or transfer staff from another office. We have neither the financial nor manpower resources to do either.'*

He acknowledged that the industry might not welcome this change and suggested that RPA explain the change to industry representatives *'in a low key way'*. He suggested that RPA should end claim *'clinics'* by 2002 and expand their telephone helpline service. (See also the glossary note on drop-in centres, paragraph 146 and the Defra Permanent Secretary's comments at paragraph 147.)

- A5 On 1 February 2002 RPA's business continuity director at the Northallerton office minuted senior managers about drop-in centres. He noted that the Minister had concerns about the potential loss of face-to-face contact with farmers visiting RPA. He emphasised the scope for a gradual move away from present system based on providing a basic check of the claim form for people who requested that and referring people who wanted more advice to RPA's telephone lines. He said:

*'In order to wean our customers away from the old and on to the new we shall need to be firm but at the same time ensure that our systems are robust, easy to use, well organised and deliver consistent and good quality advice.'*

- A6 Also in 2002 Defra carried out some research, called the Clayton report, which looked at how farmers accessed information. One of its key findings was: *'Customers' preferred*

*method of communication is word-of-mouth. Access to a method of asking questions is seen as essential'*. It also found that farmers could take detailed explanations in leaflets to be *'patronising'* and that they *'obscure what customers need to know'*. In the papers we obtained for this investigation, we found no reference to this research before July 2005.

### CAP reform begins in 2003

- A7 In June 2003 the EU adopted a fundamental programme of reform of the CAP. This programme left a degree of discretion to member states for the timing and the method of implementation of these reforms. As the paying agency for England, RPA became responsible for the implementation and administration of those reforms in relation to English farmers and producers. RPA combined their plans for the delivery of the reforms with their change programme.
- A8 RPA and Defra started planning the implementation of what became SPS as soon as the EU adopted CAP reform. Member states could choose to delay implementation until 1 January 2007, but the UK wanted to implement at the earliest date of 1 January 2005. The planning had to run parallel with further decision making and policy guidance by the European Commission and by Defra. The outline Defra plan, set out by an RPA official's email of 7 July 2003, worked towards a May 2005 deadline for farmers to make their claims. It was:
- consultation on broad policy options – July until September 2003;
  - ministers decide on policy options – October 2003;

- Commission implementation Regulations agreed – November 2003;
- detailed policy options consultation – December to February 2004;
- ministers decide on detailed policy – March 2004;
- drafting scheme rules/literature April to May 2004;
- indicative statements of farmer entitlements – September 2004; and
- claim forms to farmers – January 2005.

A9 One immediate RPA response to the outline plan was: *'We need to ensure that RPA people who understand the business and the impact of CAP reform contribute to any impact assessment'*. The emails and planning documents that we have seen from summer 2003 show that officials in Defra and RPA knew they were working to a tight timetable. The issues they considered included how to manage the development of RPA's new computer system, RITA. Its development had started as part of the change programme, and CAP reform would change RPA's requirements of RITA. But they had only until the start of 2005 to build and test RITA and Oregon, the new computer system for paying claims. Officials were also aware that the farming industry would need information about the content of CAP reform and RPA would need an effective communications strategy to deal with their information demands.

A10 On 6 August 2003 the RPA manager responsible for the implementation of CAP reform, who was also RPA's representative on Defra's Single Payment Project group, asked the project leader for a success measure *'along*

*the lines of being able to give the RPA [a] clear steer on scheme implementation against a timetable to achieve full delivery of scheme requirements by 01/01/2005'*. He asked for explicit recognition of RPA's involvement at particular points. On the timetable he said:

*'I would highlight for example the item on drafting scheme rules, literature and Sis [statutory instruments] for being [of] prime importance. It is the scheduling and the doing of the work that will make or break us.'*

A11 In October 2003 RPA still had concerns that seemed to some officials to have been overlooked by Defra. A 14 October 2003 email set out one official's concerns after his conversation with a Defra colleague. Among other things he said that the timetable had slipped by at least three months; RPA were not going to be in good shape to give a set of requirements to their systems supplier on 1 January; and even if they did provide requirements, the business rules would not be ready in time. He said:

*'[The Defra colleague] did not understand the constraints we are working to: development windows, costs, risks etc. We need to put [...] a mini-road show together and explain these issues and the options to Defra policymakers in b&w [black and white] terms so that they understand the consequences of delay. Defra's view was that our deadline for ministerial decisions is March, but they had leeway if it slipped into April – I explained that the deadline for requirements is 1 January 2004 and the latest date for final, final changes is 31 March.'*

A12 On 17 October 2003 the project manager of RPA's CAP reform implementation project noted that it was not possible to agree

the functional specification for an area of software development<sup>63</sup> because they needed more policy clarity. In particular, RPA were waiting to find out what approach Ministers would take on calculating entitlements and whether Ministers would make that decision in late November 2003 or would put it off until January 2004. (See glossary on **historic and hybrid** and **entitlements**.)

- A13 Also on 17 October 2003 the manager of the RPA chief executive's office asked for officials' comments on an estimate of the appeals costs under CAP reform – RPA and Defra expected to receive appeals about entitlement decisions and the chief executive's office would be involved in those. RPA estimated that, if Ministers chose the historic entitlements option, appeals would be *'running into five figures'* and a fair proportion would reach a higher legal challenge. They also expected legal action on behalf of farmers or landowners as a group. They thought numbers of appeals would be lower, and simpler, under the area-based option.

### Waiting for a decision about historic vs hybrid

- A14 On 7 November 2003 RPA officials circulated a draft of the revised business case for the RPA change programme. The draft noted that in September 2003 senior managers had decided to postpone the move from the existing computer systems to RITA until SPS was in place because of delays with RITA and the need to focus on CAP reform.
- A15 On 25 November 2003 the director of Defra's European Union and International Policy Directorate minuted colleagues about the RPA change programme business case, after

a discussion with RPA the previous day. He commented on how the uncertainty about when the key decision (about the approach on calculating entitlements) would be taken affected obtaining a decision on the business case. He said:

*'Papers have been put to our Ministers inviting a decision on what model to pursue [historical v flat rate v hybrid]. Ministers are very well aware that this is a highly sensitive issue and they will wish to take their time before reaching a conclusion ... I am sorry that we can't give RPA a firm indication of timing at this point.'*

He said it was possible that Ministers would want to allow for some form of consultation on the choice of model, although some work on collecting historic information would be possible without a decision from Ministers. He concluded: *'I appreciate that this note is less precise than RPA would wish in terms of setting out what needs to be done by when; but it is as clear a picture as we can give at the moment'*.

- A16 On 28 November 2003 the same Defra director minuted the Defra Director-General for Food and Farming. Among other things, his minute said:

*'Accenture need a certain level of specificity about future requirements by end December but full details by end March. New or revised requirements can be accommodated (subject to impact analysis) between January and March 2004 at no additional development costs, however any rework will incur additional costs as will any changes after 31 March ...'*

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<sup>63</sup>The entitlements calculator.

He said he thought this was: *‘a slightly more comfortable position than I had feared – failure to deliver the key decision (historic or whatever) by end December does not throw an enormous spanner in the financial works’*. He noted that the Permanent Secretary was concerned about cost and about RPA’s ability to deliver whatever option was chosen against Ministers’ preferred timetable. He said it was up to RPA and the RPA chief executive to convince the Permanent Secretary and the management board that RPA’s contingency arrangements were robust. He also emphasised the cost of keeping RPA’s existing *‘geriatric’* computer systems in action in 2005 and the risk of disallowance linked to poorly performing systems.

A17 At this stage RPA expected Ministerial decisions in November 2003 and at the end of April 2004. It expected European Commission Regulations to be made by early April 2004. RPA still expected to send farmers entitlement statements in September 2004 and to send them claim forms in January 2005. The papers we have seen show that RPA had six options for dealing with the tight timetable for developing the systems they needed for CAP reform, such as delaying RITA until 2006 or delaying CAP reform until 2006. But they noted that delaying CAP reform would be unacceptable unless proposed by Ministers.

A18 A 2006 National Audit Office report<sup>64</sup> explained what RPA had intended to achieve from its approach to implementing CAP reform.

*‘From its inception in 2001 the Agency [RPA] had embarked on a business change programme to improve efficiency but had to revise its approach in November 2003 to include the development of the single*

*payment scheme which then became the key element of business change. The way the scheme was implemented was designed to achieve efficiency savings by enabling staff in different offices to work on any tasks relating to any claim, rather than for the same individual or small team to process a whole claim from end to end. The Agency [RPA] anticipated that this “task based” approach would enable faster processing and improve staffing flexibility.’*

A19 On 18 December 2003, after an update from Defra, RPA changed their working assumption about the approach Ministers would take to calculating SPS entitlements. They had expected the historic option. They changed their assumption to the hybrid option.

#### Defra’s view on CAP reform progress – January 2004

A20 In January 2004, in a memorandum to the House of Commons Select Committee on Environment, Food and Rural Affairs, Defra explained that:

*‘... some key strategic decisions concerning the implementation of CAP reform have already been made collectively by UK agriculture Ministers. These are:*

- implementation of the SPS in the UK will be on a regional basis: Agriculture Departments in England, Scotland, Wales and Northern Ireland will be responsible for implementation in their respective countries; and*
- the SPS will be introduced in the UK from the earliest date permitted under the agreement, namely 1 January 2005.*

<sup>64</sup>The Delays in Administering the 2005 Single Payment Scheme in England, published October 2006.

*In addition the Secretary of State has already announced that, with the possible exception of seed aid, none of the options for partial coupling of payments will be taken up in England.'*

A21 By January 2004 Ministers had still to confirm the entitlement calculation method they would use for SPS. But, as far as possible, Defra and RPA officials were defining the policy which would direct development of the computer systems RPA would use to process claims; calculate payments; issue payments; and provide information on RPA's handling of SPS to satisfy the European Commission and auditors.

A22 Officials were also working on the SPS claim form. On 13 January 2004 an RPA official noted the effect of possible different requirements for the form under the historic and hybrid options. For example, he noted that RPA could comply with one requirement under the historic option, but not under the hybrid option. He did not know whether or not this would matter, because the implementing regulations were still not in place.

### RPA concerns about CAP reform implementation

A23 RPA and Defra officials were also discussing the risks of different SPS entitlement options. Replying to a 20 January 2004 email from a Defra colleague, RPA's CAP reform project head noted RPA's concerns about risks that might be overlooked by Defra. He mentioned the following risks, among others:

*'...The risk of not being able to establish entitlements after the end of the application period in May 2005 and in time to inform producers by August 2005 and then make payments from December 2005*

*onwards. The flat rate/hybrid option pushes a significant amount of the work due to be done by February 2004/2005 directly into a very short time window in 2005/2006. This gives a risk to our accreditation status by perhaps taking on too much in too short a period as outlined above. The risk to the delivery of our change programme because of additional complexity and a change in the time frame. ... The risk to the realisation of benefits outlined in our business case as a result of pushing additional work from 2004/2005 into 2005/2006 with the potential knock on effects of that.'*

The papers we have seen do not make clear how Defra responded to these concerns.

A24 On 4 February 2004 representatives from RPA's central scheme management unit, their legal team and the equal opportunities section met as a result of an enquiry from a claimant with dyslexia about the possibility of having scheme rules on audio tape. The meeting noted that the *Disability Discrimination Act* required service providers to make reasonable adjustments and it considered some proposed wording for forms and leaflets that would invite people who had difficulty using RPA's information to contact them. They agreed to do some further work on wording and to prepare a paper for consultation.

### Ministers' decision on entitlements calculation – February 2004

A25 On 12 February 2004 the Government announced that it would use the dynamic hybrid model for SPS in England.

A26 The papers we have seen show that in early 2004 RPA were aware of the need to work effectively with Defra. To mitigate the risk

this created, they set up weekly management meetings to cover the risks, issues and queries. The person responsible for RPA's draft CAP reform communications plan emailed colleagues with the following points on 2 March 2004, which he called 'a couple of comments and health warnings'. He said:

- *'...We obviously have to co-ordinate all of our CAP reform communications with Defra. In quite a lot of areas, including things such as participation in shows in 2004, their thinking is still developing. We may therefore yet see quite significant changes in our own planning occurring as a result of Defra input.'*
- *'When considering the timetable for the production of application forms and explanatory guidance, we are obviously at the mercy of changes that may be forced on us by the detailed implementing regulations for CAP Reform when these are finally published.'*

A27 The draft communication plan's first objective was:

*'to ensure that farmers have sufficient understanding of [SPS] and are furnished in good time with the appropriate literature, to apply to the scheme ahead of the 15 May 2005 deadline and so secure the benefits to which they are entitled under its provisions.'*

The plan provided for finding a small group of farmers to be a 'customer sounding board' on operational issues and the implementation of SPS. The plan also said that all of the key documents produced as part of the project would be submitted to the Plain English Campaign.

A28 In April 2004 the RPA official responsible for CAP reform communications noted the tight timetable for producing the SPS claim form and the 'uncomfortable' timing for telling farmers about cross compliance requirements. At this stage, he expected the definitive content for the claim form to be ready by 18 June 2004, the form design to be ready in August 2004 and the form to go out to farmers in March 2005. (The Regulations required it to be issued at least a month before the deadline for receiving claims.)

A29 In May 2004 RPA discussed their plans for dealing with large numbers of appeals against their decisions on farmers' historic subsidy levels, so that they could report back to Defra. (RPA started giving farmers these decisions in July 2004, in a document called the *information statement*.) The first question for RPA was whether or not they were doing enough to 'disincentivise' appeals – they wanted to focus on dealing with queries before the appeal stage. Among other things they aimed to: *'issue clear guidance to producers on how SPS will operate to avoid representations based on lack of understanding of the scheme'*.

#### RPA look at reasonable adjustments for people with disabilities

A30 In June 2004 RPA's central scheme management unit produced some guidance on assistance to claimants with disabilities. The guidance reflected the discussion of February 2004. On 24 June 2004 RPA officials exchanged emails about what adjustments they should make for the needs of people with disabilities or with particular communication needs. The RPA official responsible for CAP reform communications

had been asked by a colleague what action was proposed on the issue of 'disability'. He said he could confirm that the literature and forms produced so far made no reference to the situation of disabled customers. He suggested that a proportionate response might be to include a general statement:

*'Customers with special needs – we are committed to providing consistently high quality services that are valued by our customers. If you have any difficulties in accessing information from us, please contact your relevant RPA office.'*

This was the wording suggested in the RPA meeting in February 2004 of RPA scheme management unit, legal and equal opportunities representatives. The same official asked colleagues to let him know if they thought RPA should go further than that. The two responses we have seen were that this approach seemed best at this stage and that there would be a Minicom number for the hard of hearing, which could be publicised with the Customer Service Centre telephone numbers.

- A31 In July 2004 RPA sent farmers in England their information statements, which told them the figures used to calculate the historic element of their SPS entitlements. (See glossary on **entitlements** and **historic and hybrid**.) Some statements were issued later in the year. RPA asked farmers to tell them if they disagreed with the statement; if they wanted to claim 'special circumstances'; if the ownership of a business had changed or would change in 2000 to 2005; or if they were new to farming in 2000-02. By 'special circumstances', RPA meant reasons that would have reduced farmers' payments in 2000-02 to below their usual level.

## RPA's appeals champions

- A32 RPA had set up a network of appeals champions to deal with claimants' representations about their SPS decisions. On 8 July 2004 the manager of RPA's chief executive's office emailed the nine people who had agreed to take on the role in their area – more were due to be identified. Among other things, he said:

*'You should be aware that our aim is to keep the number of cases that are escalated to the formal appeal procedure to the lowest possible level ... we currently receive a little over 120 IACS stage 1 appeals per year. It is possible that we will receive well over 2000 Stage 1 cases appealing against decisions that arise from the entitlement exercise and moorland land appeals.'*

He said this was manageable and RPA were appointing staff to look after the extra work, but any growth in the numbers would make it very difficult to resolve the appeals about farmers' reference amounts in time for SPS payments in 2005. He explained how the appeals champions could help, for example, by identifying potential appeal cases locally and giving staff guidance on them.

- A33 On 27 and 28 July 2004 an official in RPA's CAP reform implementation team noted that:

*'We are getting anecdotal evidence from many different sources that advice being given out by RPA is inconsistent ... I know from my personal experience at shows that many farmers think the area farmed in the reference period has some relevance here [to the land declared in 2005] and can see why it could be causing confusion with both*



*farmers and some of our less experienced staff.'*

The CAP reform project head at RPA responded:

*'The moment you try to set this out the questions start to tumble out ... Happy to get something broad out [to farmers] as suggested but we need to start to write up the detail ... . That is what the industry wants and the[y] will continue to play this game, pressurise the helpdesk and anyone else they can. We must bite this bullet now.'*

A34 In August 2004 RPA ran a claim form seminar in Coventry with some farmers. At this stage RPA planned to stay in touch with this group of farmers while they worked on the form design. We have not seen any papers setting out how this work continued, but the papers we have seen show that work on the forms proved difficult to complete as fast as RPA and officials across the UK needed.

A35 In September 2004 RPA's Rural Land Register went live. RPA had intended it to start in April 2004. The Rural Land Register was fundamental to the SPS process because SPS claims were based on land area. EU Regulations adopted in July 2000 had introduced a requirement for a digitised Rural Land Register from January 2005. After the Register went live, RPA found that many more people wanted to register land than they had expected. Farmers found that they had repeated problems in obtaining accurate maps from the Rural Land Register.<sup>65</sup>

A36 An October 2004 progress report to Ministers<sup>66</sup> mentioned progress on the claim

form. It noted that RPA were now past the point where they could make changes to the claim form and still issue pre-populated forms to farmers in March 2005. The form needed to go to the printers in January 2005. The report said: *'The fallback is to send out blank SPS claim forms, but this would create more work for farmers (who already face an increase in the size of the form compared to IACS) ...'* We have not seen any papers which explain exactly when RPA changed their timetable for issuing forms from January 2005 to March 2005.

A37 The same October 2004 progress report to Ministers noted that: *'There are still a number of issues which need to be resolved to finalise the scope of the IT systems being built. These are mostly dependent on decisions by the Commission'*. The papers we have seen show that the senior management responsible for oversight of this work had decided to continue with RITA for the 2005 SPS because RPA had found more flexibility within the RITA schedule and because of the supplier's confidence about meeting milestones and progress in other related areas. RPA also had scope for an emergency option to allow payments to be made if RITA suffered a major delay. The flexibility in the schedule was based on completing different parts of the system *'just in time'* for each step in processing 2005 SPS claims. In theory, that would mean staff being able to start to key in information from claim forms from April 2005 (four weeks earlier than planned); being able to start validation cross-checks and to select claims for cross compliance inspections at the end

<sup>65</sup>See paragraphs 80 and 81 of *The Rural Payments Agency and the implementation of the Single Payment Scheme* report, published by the House of Commons Select Committee on Environment, Food and Rural Affairs in March 2007.

<sup>66</sup>This progress report was submitted in November 2004, by Defra's director-general for sustainable farming, food and fisheries and the chief executive of RPA.

of April 2005; and being able to start work on entitlements, claim value calculation and payment from July 2005.

A38 In November 2004 RPA and Defra officials had significant timing problems to manage. For example, the papers we have seen refer to the effect of recent changes to and clarification of SPS policy on RITA design; slippage in the timetable for sending farmers their claim forms; and the chance that they would miss the legal deadline of 16 April 2005 for sending forms to farmers. It was also in November 2004 that RPA introduced their SPS appeal procedure.

A39 In December 2004 RPA started the second phase of their work to inform people about SPS.<sup>67</sup> This phase started with an RPA presence at the Smithfield Show and went on to include seminars for stakeholders (such as farmers' and landowners' bodies) and a national series of 32 'first come first served' seminars in February and March 2005 about SPS, which 8,500 farmers attended. RPA also made DVDs of the seminars for farmers' groups to distribute to members. The first phase, in summer and autumn 2004, had used press announcements and direct mailing of information brochures to tell farmers about policy decisions as they were made.

A40 RPA staff have told us that, during 2004, RPA's management board 'put in a plea to the Minister' to postpone the introduction of SPS. They said the message they received was that there was no intention to defer and no option to postpone. In the papers we obtained from Defra and RPA, we have not seen any documentary evidence to show this plea being made.

A41 On 7 January 2005 an NFU email gave NFU local advisers and directors an update on what they had been doing about the Rural Land Register. The email began: 'We have been raising the RLR issue with Defra and the RPA at every appropriate occasion'. The email summarised the current position on the different problems faced by farmers in obtaining maps. It also said that RPA were concerned by the amount of new land being added. It said:

*'We have stated that it was unacceptable for the RPA to accuse farmers for not putting all their land on the IACS forms to date, irrespective of the underlying IACS regulations, because the RPA/MAFF [Ministry of Agriculture, Forestry and Fisheries, which preceded Defra] have accepted the position for years.'*

#### Final preparations for accepting SPS claims – January to May 2005

A42 On 12 January 2005 RPA managers discussed, in writing, the preparations for looking after SPS claims. They had assumed that each staff member would process 10 claims a day and that the initial checks on receipt of a claim entailed looking at 5 data fields. On 24 January 2005 RPA asked farming bodies, such as the Country Landowners' Association (as the Country Land and Business Association was known then) and the NFU, to comment on the draft SPS Handbook – by the end of Thursday 27 January. They apologised for the short deadline. Within RPA and Defra, the person responsible for the Handbook had a circulation list of 18 people for comments. Among other comments (which covered 11

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<sup>67</sup>RPA's 2004-05 Annual Report and Accounts.

pages and supplemented previous comments made on the claim form), the NFU asked:

*‘What can the RPA customer expect from the RPA in terms of help with completing the forms? Will there be a facility for hand delivery and checking – presumably at the current RPA processing sites, plus Worcester and Newmarket?’*

The papers we have seen do not include any response from RPA to the NFU’s comments.

- A43 On 27 January 2005 RPA officials gave Ministers a further progress report. Among other things, they said that the statutory instruments for SPS were on target to be laid before Parliament at the end of the month; the SPS claim form had been finalised; the explanatory notes (the Handbook) would be in ‘near final form’ by the end of the month; and a run of 32 regional SPS roadshows for farmers would start on 1 February 2005. They also commented on the RITA testing and said:

*‘The CAPRI<sup>68</sup> board considered issues on testing at January’s Board [meeting], including the experience of the Accenture test team and ensuring proper transparency on progress. Actions are in hand in this area.’*

- A44 On 2 February 2005 a Defra official emailed colleagues about the latest EU consolidated Regulations and their definition of permanent pasture. It was different from the guidance previously published by Defra based on their understanding at the time. Officials noted that RPA should be prepared for some errors in the calculation of set-aside flowing from the earlier guidance.

- A45 A further deadline for comments on a draft of the SPS Handbook was on 7 February 2005. Many of the points made were about using precise and consistent language. A member of the legal team said:

*‘For example, in the introduction in some instances we talk about cross compliance “requirements” ... and in others cross compliance conditions ... or eligible agricultural land, eligible area or eligible land or eligible hectares. Activate in some instances is explained as claim payment against that entitlement ... make a claim upon and use ... I think we need to be consistent in terminology and phraseology throughout or we will confuse the reader.’*

In the main, these suggestions were not implemented in the final version of the 2005 Handbook.

- A46 On 24 February 2005 officials gave Ministers a further progress report. They said all the key policy decisions had been made and the statutory instruments would take effect on 1 March 2005; they would send out pre-populated claim forms by 4 April 2005 and the guidance notes were completed; a sample claim form had gone out on 16 February 2005; and up to 350 farmers had attended each of the 16 regional roadshows (in which RPA had talked through the claim form) held so far. Officials also updated Ministers about the RITA testing timetable, which they said looked tight.
- A47 RPA’s customer service centre had opened on 14 February 2005. In the same month RPA published the SPS Handbook. The customer service centre was initially unable to deal with

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<sup>68</sup>The CAP Reform Implementation Board (CAPRI) was chaired jointly by the chief executive of RPA and the Defra senior manager responsible for CAP reform policy.

the number of calls it received, which peaked at 12,000 per day. RPA have told us that call numbers rose from 900 a day in February 2006 to more than 7,000 a day in April and May. The service centre expanded its opening hours and call answering capacity in response. Also, the task-based RITA computer system meant RPA staff could not give callers an overview of their claim.<sup>69</sup> The RPA chief executive at that time has said that he recognised that moving to the customer service centre approach was going to be *'a hell of cultural change to customers'*.<sup>70</sup> Part of the culture change reflected RPA's move to having a smaller number of offices and a telephone-based customer service centre, instead of having nine regional offices accepting and processing claims. This removed the geographical link between claimants and the processing office.

A48 RPA also had difficulty recruiting staff for the call centre. Later in 2005, RPA's 2004-05 Annual Report would say:

*'We accept that there are lessons to be learnt in dealing with the new customer base, in particular in responding to the near tenfold increase in volumes of enquiries, which required a move to contingency plans.'*

RPA have told us that in March 2005 they recruited agency staff and doubled the size of the call centre. They also outsourced work to BT call centres in Derby and Shoreditch, where RPA staff supported the operators taking calls.

A49 In March 2005 RPA sent their existing customers SPS claim forms and explanatory material. In April 2005 RPA sent farmers on

their mailing list a supplement to the SPS Handbook. The supplement included a list of common errors and one of these was failing to activate entitlements.

### RPA guidance to staff in 2005

A50 RPA have told us that their system of providing guidance to staff is based on desk instructions, which are aimed at brand new staff; desk top helpers, which map the claim process (and originally were without detailed descriptions); and updates called Briefing Notes provided as needed. A system called IRIS is the main source of guidance. It distinguishes between the current guidance for each scheme year and the superseded guidance for each scheme year.

A51 RPA also have a system that allows staff to seek specific guidance about cases in which they may need to correct a claim. RPA call this making a defect referral. If the facts of a case differ from the examples set out in the desk instructions, the processor (in 2005) or whole caseworker (since 2006, as far as possible) completes a form set up to provide details about the case. He or she sends this referral form to the policy team. The form is also logged on a database called the SMU (scheme management unit) referral log.

A52 RPA direct staff to refer any questions through the defect referral process, which was called the *'resolution centre'* in 2005-06. RPA set up a network of RITA delivery experts who had access to the referral log and, because of that, should have known the familiar issues.

<sup>69</sup>Paragraph 79 of the House of Commons Select Committee on Environment, Food and Rural Affairs report, *The Rural Payments Agency and the implementation of the Single Payment Scheme*, published in March 2007.

<sup>70</sup>Q1143 in Volume II of the same report.

Caseworkers put their queries to policy through the delivery experts.

A53 In March 2005<sup>71</sup> RPA gave staff guidance on how to deal with customer queries about SPS. Staff were to refer all queries to the customer service centre in Newcastle, which would use a 'knowledge base' of questions and answers to respond. Staff could seek further help from the scheme management unit if the knowledge base could not provide a definitive answer. Some fresh RPA guidance on 18 March 2005 gave examples of written responses to queries. These examples included a standard paragraph intended to make it clear that the reply could be different if the person's circumstances were different or were more complex than the question quoted in the response.

A54 On 29 March 2005 the NFU emailed their contact at RPA. They listed nine issues that they believed needed to be addressed in the forthcoming SPS guide and 102 questions that they had previously sent RPA or Defra. They said most of these questions were still unanswered.

A55 On 6 April 2005 RPA announced that they were sending out pre-populated claim forms for SPS 2005 and that the claim packs included a copy of the SPS Handbook. The press release also said:

*'To date 2051 completed applications have been received. However RPA has had to return 23.3 percent of these mainly because customers have failed to sign each completed part of the form. In most cases it is the Field Data Sheet that has not been signed. Customers are urged to read back over their form and the Guidance Notes to*

*satisfy themselves that the form is accurate and complete before returning it to RPA.'*

A56 The 8 April 2005 edition of *Farmers Guardian* quoted a spokesperson for RPA as having said that:

*'RPA recognises and apologises for the delays that some customers have experienced in calls to the customer call centre being answered.'*

*'The numbers of calls received have increased several fold over the last month and while we had projected and planned for increased call volumes during the introduction of the Single Payment Scheme, the call volumes have been even higher than those projections.'*

A57 On 12 April 2005 RPA announced that they were sending farmers a supplement to the SPS Handbook. The supplement contained a list of common errors that RPA had found in SPS claim forms and corrections to their previously published guidance. The list included a reminder that claimants had to complete column I for establishment and column J for activation on the field data sheets to receive payment. RPA have told us that they identified the common errors from their initial checks (see glossary – level 0 validation) on claim forms.

A58 The RPA Chief Executive and some of his officers attended a session at the NFU Council meeting of 11-12 April 2005. The minutes of the Council meeting said:

*'The RPA explained that they were working hard to change this attitude [an inflexible culture that attributed all errors to the*

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<sup>71</sup> Briefing Note dated 11 March 2005, reference 03/05.

farmer] and to improve customer service and the accuracy of information captured. They agreed that cases of genuine farmer error would be recognised and the RPA would try and be flexible with errors.’

The NFU also kept a more detailed note of the session for circulation to their SPS information list. This note said that, in response to the NFU’s account of the problems their members were having, RPA apologised. An RPA official also spoke about: *‘the issue of obvious error provision and the issue of delayed IACS 22s’*. The note does not show RPA making any specific promises to be flexible. In commenting on a draft of this report, the Defra Permanent Secretary said:

*‘At this point removed from events, it is very difficult to know what was said on those occasions, but the belief of those involved within RPA and Defra at the time is that staff were invariably careful to make clear that while the Agency would be as flexible as possible, this was in the context of the legal provisions, particularly obvious error. The NFU in particular would have known that there were limitations on the flexibility. While we cannot vouch for every conversation, I do not believe, therefore, that messages given at the time were mis-leading.’*

She also said: *‘Our view is that the Agency demonstrated in practice the flexibility that was suggested by messages given at the time.’*

A59 NFU Council delegates raised several concerns: the difficulty of getting through on the RPA Helpline; the absence of support for SPS claimants from RPA and Defra; examples of conflicting or bad advice from RPA on special entitlements among other things; concern about FVP authorisations; and the risk that

two farmers might claim for the same piece of land. The NFU President had summed up the meeting: *‘by saying that it is the fear of making a mistake and being penalised for this largely one-off issue’*. We also spoke to officials from the NFU about their recollection of the implementation of SPS in 2005. They told us that the sentiment from the RPA customer service centre in 2005 was just to get the form in to RPA. Staff on the helpline tended to give a comfort message – that things would be all right at the end.

A60 On 25 April 2005 a member of RPA’s legal team minuted the CAP reform project head at RPA, summarising the current legal position on missing data in SPS claim forms. He said:

*‘One point to note is that in my opinion, there is no legal obligation to return forms at all, or query incomplete data. It is really incumbent on the applicant to make sure they enter the correct details. However from a policy perspective there may be a customer service driver that encourages RPA to do its best to ensure that as many eligible applicants as possible apply to the scheme. There is also a slight risk of challenge if an applicant is not queried in relation to an inconsistency with his or her application i.e. they may claim that the form was confusing or misleading.’*

In commenting on a draft of this report, the Defra Permanent Secretary said that this was the opinion of one lawyer, not a collective view. She said:

*‘The collective view in the Agency was that there was no anomaly as, in seeking to establish entitlements, the claimants had submitted a valid claim and the option*

*not to activate those entitlements was a legitimate one.'*

A61 On 29 April 2005 a *Farmers Weekly* story described farming industry accounts of being given contradictory or incorrect information by the RPA helpline. The story quoted an RPA spokeswoman as saying:

*'As with previous schemes, RPA will of course use the obvious error provisions but if farmers have particular issues about their application, they should send in an accompanying letter setting out the necessary details. Customers are advised to keep a copy of their application form and the covering letter for their records.'*

Earlier in April 2005 *Farmers Weekly* had published stories reporting RPA's advice that farmers should not wait to receive completed land registration details before submitting their 2005 SPS claims and farming agents' concerns about the quality of information from RPA.

A62 On 11 May 2005 RPA published a note on their website with a list of common reasons why they had returned forms to claimants. They said applicants had made amendments, but not initialled and dated the alterations; had not signed the declaration on Part S; had not completed questions 2 and 4 about the establishment and activation of entitlements subject to special conditions; or had not completed at least one line entry on the field data sheet. In brackets, they added that applicants must complete columns I and J (on

the field data sheets) if they wished to declare and claim land.

A63 Monday 16 May 2005 was the last day that RPA could accept a 2005 SPS claim without imposing late claim penalties. RPA told the farming press that they had received 116,322 claims. They also said, about the accuracy of the information given out by the helpline, that 'scope for inconsistency' had been introduced because the information provided to RPA operators had been updated regularly. The Agency were reported to have accepted that 'there were lessons to be learned in dealing with the new customer base – which looks to have grown by about 20,000 farmers – and in particular in responding to large volumes of enquiries'.<sup>72</sup> The same story quoted Tim Bennett, the NFU president at the time.

*'Mr Bennett said bearing in mind the process had been "less than perfect" the agency had to show flexibility as it processed applications. "We know that there will be some errors and we need common sense when genuine errors are being dealt with. We are demanding flexibility and we don't want to hear the agency say "We can't do this".'*

A64 RPA carried out initial checks on the forms as they received them. These checks were intended to ensure that each claim had enough information on it to be lodged as a valid claim. This was Level 0 validation. But RPA were unable to start keying in the claims for three weeks because of initial problems with the high volume data capture (HVDC) system used to do the work.<sup>73</sup> The initial

<sup>72</sup>*Farmers Weekly* 20 May 2005.

<sup>73</sup>Summary note for 24 May 2005 meeting of the CAP Reform Implementation Programme Executive Review Group (ERG). It was Defra's means of senior management oversight of RPA's CAP reform work. The Defra Permanent Secretary chaired the group, which included an external director with experience of programme management.

checklist for Level 0 validation was part of the desk instructions for staff. Version 4.1 of the checklist said: *'This check covers the form SP5a and must establish that the application: shows name and address details; has been signed and dated'*.

A65 The checklist questions were about the identity of the farmer; the farmer's individual elements of SPS and other relevant schemes; the field data sheets; the signature; and the declaration. The minimum requirement in the section about the elements of SPS and other relevant schemes was for the farmer to have ticked yes to the question: *'Please confirm that you are applying to establish entitlements for the areas that you have entered in column I of your field data sheet'*, **or** to have completed column I on the field data sheet (SP5b); **or** to have ticked yes to the question about confirming that he or she was applying to establish special entitlements; **or** to have ticked yes for any box in the column on the common land field data sheet that asked whether the farmer was establishing entitlements for those rights; **or** to have ticked yes to the question about the area payment for nuts, **or** about aid for energy crops **or** about protein crop premium **or** about hill farm allowance.

A66 On 20 May 2005 an RPA spokeswoman spoke to a farming reporter for a story about the 31 May 2005 deadline for amendments to SPS claims.<sup>74</sup> She was quoted as saying:

*'The most common mistake is where farmers haven't actually indicated they want to establish their entitlements. Some first-time applicants, such as horse owners,*

*haven't known what their field numbers and national grid references are. If the claim is invalid, where basic information has not been supplied, such as not filling in the name and address section or where information has not been supplied about actual fields or where the forms have not been signed, we are trying to contact the applicant to let them know so they can rectify it.'*

A67 RPA's targets for the 2005-06 business year targets, announced in May 2005<sup>75</sup>, included:

- *'commence payments under the single payment scheme by February 2006 and ... process and pay 96 per cent of valid SPS claims by value by 31 March 2006'; and*
- *'process and pay valid claims with at least 98.5 per cent accuracy.'*

A68 On 24 May 2005 the Executive Review Group met. Among other issues considered at the meeting, RPA's operations director explained the process followed when RPA received forms. The meeting also noted the HVDC problems which had led to a three-week delay in logging forms on to RPA's database. In June 2005 the working group responsible for communication about SPS revisited the communication strategy. RPA had planned for minimal communication needs from June 2005 to the 2006 payment date. The group acknowledged that was no longer realistic.

A69 On 19 July 2005 RPA published their *Annual Report and Accounts 2004-05* (the 2004-05 Report). It said:

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<sup>74</sup> *Farmers Guardian* 20 May 2005.

<sup>75</sup> 18 May 2005 written statement tabled before the House of Commons by the Secretary of State.



*'RPA is currently facing considerable difficulties in carrying out its prime directive: the implementation of the SPS by February 2006 ... Data processing of applications and the determination of claimants' entitlements have been affected by a combination of factors.'*

It referred to the high volumes of SPS claimants and late requests for changes to land registrations; the poor performance of RPA's Rural Land Register; incomplete claims; a huge number of customer enquiries about claims; and the three-week delay in establishing a stable platform to record SPS claims. The 2004-05 Report said RPA's mitigating action had successfully dealt with the effects of those difficulties. But it also acknowledged that they were working to a very demanding timetable for delivery of SPS.<sup>76</sup> The 2004-05 Report also said that RPA's redundancy plan ('Exit 1', RPA have said that this was a voluntary exit plan rather than a redundancy plan) had reduced RPA's skills in the short-term. It described how they were dealing with that. The 2004-05 Report also summarised the expected benefits of RPA's change programme. They included: *'Electronic management of documents, including automated case management and workflow controls'* and

*'Centralised information that will be available to any authorised user or system within the Agency to view that information, including a single repository of customer information and a single land register.'*

RPA's annual reports also gave RPA's staff numbers, which RPA had intended to reduce under their change programme. The number of permanent RPA staff fell from 3,690 in

2003-04 to 2,666 in 2006-07. But the total number of staff rose from 3,996 to 4,467, because of the numbers of short-term and agency staff recruited.<sup>77</sup>

A70 On 9 September 2005 the Executive Review Group met. Among other things, RPA reported to them that, since the most recent release of RITA, there had been problems. By 22 August 2005 it had become possible to have 600 users on RITA at the same time as 115 in the customer service centre and 75 in the Rural Land Register and RPA said the situation was improving. There were about 1,000 staff filling the system maximum of 600 concurrent users. Overall, about 1,400 staff were covering the 850 total concurrent users that the system could support. The estimate was that RPA needed capacity for 1,500 concurrent users in order to meet their timescales. As matters stood, RPA expected 75 per cent of Level 1 validation tasks to be complete by the end of September and about 20,000 claims had completed the full validation process. Entitlement processing could only begin when Level 1 validation of all claims was complete.

A71 In September and October 2005 RPA produced guidance to help staff decide whether or not certain mistakes in claims fell within the 'obvious error' regulations. (These are set out in the specific standard.) RPA have also told us that in late 2005 they conducted an exercise aimed at claimants who had said that they wanted to activate all entitlements entered in column J but had then left column J blank. RPA contacted claimants to check their intentions and subsequently paid a number of them under 'obvious error' provisions. From the evidence we have seen, RPA do not know exactly how many they paid.

<sup>76</sup> Page 48.

<sup>77</sup> RPA Annual Report and Accounts for years 2003-04 to 2007-08.

## RPA's claim processing problems come to a head

A72 In January 2006 the House of Commons Select Committee on Environment, Food and Rural Affairs said:

*'We are deeply unimpressed by the failure of Defra and the RPA to plan properly for the process of administering payments under the Single Payment Scheme. This has led to English farmers being disadvantaged in comparison with those in other parts of the UK, who have already received a partial interim payment. We were also dismayed at the complacency of the Minister, who refused to admit that any mistakes had been made or that anything could have been done differently to avoid the problems. Most significantly, we were staggered that, so close to the proposed date for making payments, and nearly a year after that date was announced by the RPA, the Minister could still not give us a definitive statement about when payments would be made, or whether they would be full or partial payments.'*<sup>78</sup>

A73 RPA started making some payments to farmers in February 2006, but were unable to complete as many claims as they had expected. On 16 March 2006 the then Secretary of State acknowledged that RPA would be unable to make the bulk of payments by the end of March 2006. She said that she had replaced the RPA chief executive with immediate effect. A National Audit Office report on RPA, published in October 2006<sup>79</sup>, reviewed RPA's implementation of SPS. It said:

*'Implementation has not provided value for money because the project has cost more than anticipated and is not fully implemented as scoped, planned efficiency savings will not be achieved, relations with the Agency's customer base have been damaged and there is a risk of substantial disallowance of expenditure by the European Union.'*

Also in October 2006, the then Permanent Secretary of Defra gave evidence to the House of Commons Public Accounts Committee. A member of the Committee asked her: 'Was the Rural Payments Agency unfit for purpose between May 2004 and March 2006?' She replied: 'Subsequent events suggest that it was.'<sup>80</sup> (I say more about the National Audit Office and Committee of Public Accounts reports later in this chronology.)

A74 RPA had given Ministers progress reports on how fast RPA were clearing validation tasks (see glossary) for SPS claims. Table 1 summarises the figures put to Ministers.

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<sup>78</sup>Rural Payments Agency: interim report.

<sup>79</sup>Paragraph 3, *The Delays in Administering the 2005 Single Payment Scheme in England*, Report by the Comptroller and Auditor General, October 2006.

<sup>80</sup>Q68 of written evidence, *The Delays in Administering the 2005 Single Payment Scheme in England*, House of Commons Committee of Public Accounts, July 2007.

**Table 1: 2005 Single Payment Scheme – outstanding validation tasks**

Date information collected	Total number of tasks	Approximate number of tasks neither cleared nor already underway
21/11/05	<i>'just short of 500,000'</i>	440,000
28/11/05	522,000	443,000
05/12/05	527,000	436,000
13/12/05	562,000	433,000
21/12/05	631,000	484,000
Not known	662,000	497,000
11/01/06	687,000	379,000
17/01/06	708,000	362,000
25/01/06	712,000	328,000
31/01/06	713,000	301,000
07/02/06	731,000	282,000
13/02/06	c. 796,000	247,000
21/02/06	c. 807,000	242,000
06/03/06	c. 802,000	188,000

Source: *Cold Comfort: the Administration of the 2005 Single Payment Scheme by the Rural Payments Agency*.<sup>81</sup>

A75 On 19 April 2006 the Secretary of State announced that RPA had paid 39 per cent of customers for the 2005 SPS, but they did not expect to make all payments by the statutory deadline of 30 June 2006. RPA opted to make partial payments for successful 2005 SPS claims.

A76 The temporary RPA chief executive had attended a session at the NFU Council meeting of 10-11 April 2006. The minutes of the meeting said he agreed that where RPA

provided incorrect information on which a farmer reasonably relied, the farmer should not be penalised. He said RPA were looking into ways of addressing that.

### The 2006 SPS claims

A77 On 21 April 2006 RPA announced that they were aware that some 2006 SPS claim forms had gone to customers without pre-populated land and entitlement information. RPA said farmers could fill in the forms they had already received, but they expected to send out pre-populated forms by the end of April 2006. RPA also planned to provide blank forms at their offices and on their website.

A78 On 5 May 2006 the Minister responsible for RPA announced that late claim penalties would not apply to claims received between 15 May (the usual deadline for claims) and midnight on 31 May 2006. This meant that the final deadline for claims, albeit with a late claim penalty, would be 9 June 2006.

A79 On 8 May 2006 the NFU sent an email update to their 'SPS Information List' about the advice and assistance they had given on appeals. Among other things, they noted that an NFU member had failed to submit a full application in error (in May 2005). After intervention by the NFU and the NFU member's MP, RPA had allowed the member to correct matters early in 2006.

A80 On 10 May 2006 RPA started making partial payments of 2005 SPS claims, set at 80 per cent of each farmer's estimated entitlement. Also in May 2006, the new Secretary of State appointed a new RPA Interim Chief Executive, Mr Tony Cooper.

<sup>81</sup>Laid before Parliament in December 2009 under s10(3) of the *Parliamentary Commissioner Act 1967*.

- A81 On 9 June 2006 RPA announced that the deadline for claiming under the 2006 SPS would pass at midnight. They said that under the SPS rules, no SP5 forms submitted after 9 June could be considered for payment in the coming year. Their announcement also said that staff had been *'concerned with basic errors and omissions on around 12 per cent of the 105,000 forms received by the end of May, including missing signatures and blank entitlements and field data boxes'*.
- A82 On 22 June 2006 RPA announced that they had put back the date that penalties would apply to 2006 SPS claims from 31 May to 15 June. The European Commission had agreed to amend the relevant Regulations. This meant that claims made by 15 June 2006 would escape late claim penalties. Penalties would start to apply from 16 June and RPA would reject claims received after 10 July 2006.
- A83 On 4 August 2006, RPA told staff that they had allowed a *'small minority'* of customers to activate their entitlements under the 'obvious error' provisions. They explained the context and asked staff to revisit similar cases that they had previously rejected. The guidance invited staff to tell the scheme management unit about cases where claimants had failed to activate fields and there was a possible inconsistency in the claim form.<sup>82</sup>
- A84 On 8 August 2006 RPA's operational management team discussed the clearance of work on the 2005 SPS, among other things. They noted that:
- the aim was to clear backlogged work by the end of October – they had over 40,000 pieces of correspondence and over 10,000 appeals and representations;
  - 3,909 cases affected by dual claims should have the *'offending'* land parcel removed where there is no agreement from both parties concerned;
  - a further 6,000 small claims would be *'auto-penalised'* subject to discussion of how that would work in practice; and
  - up to 34,000 cases needed rework.
- A85 The operations director noted that they had staff resource equivalent to 2,043, but needed 2,405 to meet the recommendations for clearing the 2005 cases. The meeting agreed to focus on 2005 cases until October and then swap to 2006 cases, while using the whole caseworking approach to deal with remaining 2005 work.
- A86 We have seen minutes, prepared by the NFU, of SPS stakeholder meetings organised by RPA. A regular agenda item was on unanswered correspondence. At the 11 August 2006 meeting RPA explained that they scanned in every piece of correspondence when it reached them and covering letters were scanned in separately from claim forms. The NFU stated that their members had sent in series of letters which had not received replies. At the 19 September 2006 meeting, RPA told the meeting that they had cleared 27,000 pieces of claimant correspondence that had been unanswered.
- A87 On 15 August 2006 the operational management team discussed the problem posed by 11,331 claims in which applicants had not activated all the entitlements they had claimed. The minutes summarised the RPA policy director's report to the meeting.

<sup>82</sup>Briefing Note number 218/2006, issued on 4 August 2006.

[The policy director] reported that there are several thousand claims (11,331) where the applicant has not activated all the entitlements that they have requested to be established. It is likely that some of these applicants will have not activated all their entitlements in error and others will have done so because the land was not available for the full 10 months required.

‘There are a number of representations from customers wishing to activate all their entitlements. Cases have been reviewed on the basis of the obvious error provisions and been dismissed as the form is internally consistent. One or two cases have been approved as there are inconsistencies such as the summary page showing one figure but the total of the activated fields a much smaller figure. A question has been raised as to whether or not it is sustainable to maintain the current line or whether or not we should accept all representations without further investigation. This runs a disallowance risk for increasing a claim after the deadlines for reasons which are not in the bounds of an obvious error. DARDNI [the Department of Agriculture and Rural Development for Northern Ireland] follow the line that RPA currently takes.

‘The legal position is that the Commission produced a working document (CWD) AGR 49533/2002 on obvious error but did not reissue specifically for the SPS regulations. Article 19 of Regulation 796/2004 which states “without prejudice to Articles 11 to 18, an aid application may be adjusted at any time after its submission, in cases of obvious errors recognised by the competent authority.” However, misunderstanding scheme rules is not the basis for obvious error. The one key requirement is that there

is an inconsistency in the application form that would give rise to a suggestion of obvious error.

‘Outside the obvious error provisions described above, a claim can be amended upwards but only until the 10 June as that was the latest date for a claim to be submitted in 2005.

‘Legal advice is also that, if we were to concede these cases there would be a strong risk of disallowance from the Commission. In addition, they believe we would have a strong case if challenged by the industry on these cases due to the lack of legal cover to amend all these claims upwards. It has been suggested by the CLA that Article 68 of Commission Regulation 764/04 could be used to add to a claim after 10 June. However, our own legal advice is that this provision exists only to disapply reductions and/or exclusions (i.e. penalties) where these would otherwise apply. The Article cannot be applied in the way suggested by the CLA.

‘OMT recognised that to review each claim on a case by case basis would be a lot of work. They agreed further work should be undertaken to look specifically at the following:

- The size of the fund value affected
- The size of the land affected
- The various categories of representations that have been made
- What the Devolved Administrations are doing with this issue

*'It was noted that the 2007 form had been changed to automatically tick the columns to activate entitlement on established entitlement and it would be down to the farmer to clearly indicate if he wanted to deactivate it.'*

A88 The 22 August 2006 operational management team meeting heard that the Scottish and Welsh devolved administrations said they had: *'stuck rigidly to the line that claims could only be amended up to 10 June and also upon evidence of an internal inconsistency that would allow for an obvious error decision'*. At this point, RPA had received seven appeals from among the 11,331 cases. They said the partially activated cases covered 93,876ha with a value of €2.5m (sic). The minutes of the same meeting had an update on progress in work on the 2005 and 2006 SPS claim processing. Among other things, they noted the following:

- they aimed to have paid 98 per cent of 2005 SPS claims by 31 October 2006;
- 200 people were working on the backlog of 2005 SPS correspondence, with the aim of clearing the 30,000 correspondence backlog by the end of October;
- RPA needed to: *'consider whether we should be writing off old letters'*.

A89 In September 2006 RPA's then policy director gave the operational management team a further update on the 2005 claims that had not been fully activated. The minutes of the 5 September 2006 meeting said:

*'[The policy director] put forward a paper [which is at Annex D of this report] on how to deal with the 11,331 claims where the applicant had not activated all the*

*entitlement they had requested to be established. The question has been raised about whether RPA should assume this is how the customer wanted to complete their form or treat them under the 'obvious error' provision and if the lat[t]er whether this should be done as a blanket exercise or after a review of each case. Taking into account the legal opinion and the operational impact it is difficult to justify an approach which does not test the intention of the claimants against the guidance on obvious errors, however, should OMT decide that such an approach is required for reputation reasons then it would need to be referred to the Disallowance Working Group for their advice on the disallowance risk. Work is also needed to assess the amount of resource needed to deal with this extra work.'*

The following week's meeting of the operational management team noted: *'Further work is being carried out to see if there is any more we can do to stretch the rules past obvious error'*.

A90 On 10 October 2006 the operational management team considered the paper on the options for dealing with the partially activated claims (see Annex D). The minutes recorded the discussion as follows:

*'The paper explains that there are 11,331 claims where the applicant has not fully activated all the entitlements that they have requested to be established. Examples are given of the types of cases that are covered. There is latitude within the regulations to deal with cases where of "Obvious Error" but from an understanding of how it has been applied to date, there are still a significant number of cases not*

covered by “Obvious Error”. RPA face the situation of refuting a number of claims.

*‘The three possible options were covered:*

*‘1 Continue to just deal with the representations and appeals related to this issue and not take any further action.*

*‘2 Have a common blanket acceptance of all of the cases. This will be a high disallowance risk and the Agency would be pushed to also accept everything in the future. This option would be a clear and obvious breach of controls.*

*‘3 Use the obvious error guidance and take a judgement on individual cases where we believe the customer deserves a payment due to an error/misunderstanding. This will restrict the disallowance to those particular cases. The downside to this option is that it is resource intensive and would require high quality staff. There is also the same problem as with option 2 in that stakeholders will always be pushing boundaries by using precedence of cases that were accepted in the past.*

*‘There is no clear obvious route for dealing with these claims. The recommendation in the paper was to take forward option 3 although there was recognition of the resource implications.*

*‘The main points of discussion were:*

- *The question was asked as to whether the value of the unactivated entitlements was known as it would give an indication as to whether the payment ceiling could be breached if all the unactivated claims were paid.*
- *By undertaking option 3 there is a risk that it would be difficult to draw a line*

*under those claims that would be paid and those that wouldn’t and that the boundaries could be pushed back to a level where there was no control.*

- *The attraction of relying on the form (i.e. option 1) is that it’s objective and you don’t have to judge whether or not a farmer is sincere when they claim that they made an error when filling the form in or that they misunderstood the form. It is more straightforward to just stick to what is detailed on the form.*
- *A blanket acceptance of the claims (i.e. option 2) cannot be done as the non-activation of some entitlements is intentional in a number of cases.*
- *It was calculated that it would take a minimum of three weeks (based on 0.5 days per task) to work on 11000 cases which is a resource that the agency cannot afford to remove from on-going SPS processing.*
- *How this is handled in the future needs to be looked at and we have until the 10<sup>th</sup> June 2007 to make any reforms to the process.*
- *One option would be to phone the customer if there is only partial activation of entitlements on the form but would have to ensure that RPA are under no obligation to do this. It was noted, however, that this could produce a dependency culture where customers relied on the Agency too heavily to correct their forms.*
- *Another option would be to assume that everyone wants their entitlements activated and the form should include a*

*tick box to say that the customer does not want their entitlement activated. However, it was mentioned that this approach was used with HFA claims and it led to more errors as people ticked the boxes by mistake.*

- *It was suggested that there could be an option of saying to the customer that if the form is submitted by an earlier deadline, then the forms would be checked for errors, although it was thought that this would take up too much resource.*
- *A routine should be produced to be able to run a query on the database to find all the SBIs where the entitlements have not all been activated.*
- *The recommendation by OMT was to go with option 1 for 2005 claims because option 3 would generate a resource drain that the agency cannot afford as we are still closing 2005 and making the transition to 2006. The suggestion is to just leave claims as they are at the moment and deal with the subsequent reps and appeals.*
- *By not looking at cases where the customer believes they have made a mistake might cause bad press for the RPA, however it is too late for 2005 claims but should make an effort into reforming the process for 2006.*
- *A recommendation for 2006 would be to only phone the customer if it looked like there was an obvious error with the form but not to just phone up for any anomaly.*

- *Another recommendation was to update the guidance to reemphasise the point about activation of entitlements.*
- *It was hoped that analysis of the 2006 data should show a trend where non-activation of entitlements are reducing as people get used to the system and the 1<sup>st</sup> year issues don't apply anymore.'*

A91 Also on 10 October 2006 RPA's operations director circulated his own note of that day's operational management team meeting. Under the heading '2005 SPS claims with partially activated entitlements', he said:

*[...] All of the options for addressing these cases will require manual effort and carry disallowance risk. I suggested that any manual effort will reduce our focus around remnant 2005 claim processing, and the transition to 2006. I therefore proposed that we hold a firm line and do not review individual cases. This was agreed, as was an intention to check on the number of representations and appeals resulting from this decision.'*

(He nominated an officer to ensure that RPA separately identified those cases.) The operations director also nominated officers to follow up on work to address the partial activation position for SPS 2006 and 2007. (In 2007 RPA started sending farmers what RPA called 'nonpay letters' if RPA checks found the farmer had omitted to activate any entitlements. The letters told farmers they would not receive a payment without activating the entitlements. RPA have told us that farmers who receive a nonpay letter can change their claims up to 31 May without penalty.)



A92 On 18 October 2006 the National Audit Office published its report on SPS.<sup>83</sup> It said: *‘The Agency encountered difficulties in processing payments due under the scheme, totalling around £1,515 million, and failed to meet its own target to pay 96 per cent of that sum by the end of March 2006’*. The report said Defra and RPA had not fully appreciated the risks of what they were attempting with SPS, partly because the key people involved lacked a common understanding of the SPS requirements and customers’ likely behaviour. The report also said that implementing SPS at the same time as the RPA’s change programme (which entailed job cuts) meant RPA lost the knowledge of too many experienced staff.

A93 On 30 October 2006 the then Permanent Secretary of Defra, the then Interim Chief Executive of RPA, and other officials, gave evidence about the administration of the scheme to the House of Commons Committee of Public Accounts. When asked by the Committee Chairman why the administration of the scheme had been a *‘complete failure’*, the Permanent Secretary replied:

*‘As the National Audit Office Report highlights, problems with the mapping were probably one of the key challenges. There was a vast increase in the number of mapping changes, which had either not been previously reported or were produced – incentivised – by the new scheme.’*

A94 In October and November 2006 RPA’s operational management team discussed the action they could take to make sure farmers activated their 2007 and 2008 claims as they intended.

A95 In November 2006 RPA and Defra officials exchanged emails about the possibility of amending a land use code on a field data sheet of a claim form. This problem was a factor in a number of appeals. There were competing views on whether RPA could accept a correction to a claim in the circumstances – in these cases there was no clear remedy within the regulations. The Defra official, who was also RPA’s director of policy, responded on 10 November 2006. He said:

*‘The principle is clear. Unless there is an inconsistency in the way the form has been completed which can trigger the current obvious error guidelines and lead to acceptance, we have no option but to reject. The paper on possible acceptance of representations based on a misunderstanding was turned down by OMT on the grounds that a rethink leading to acceptance of such representations now would lead to revisiting cases and triggering a rush of new representations, which could divert resources back to the clear-up of 2005 cases.’*

#### *‘Haunted’ by partial activation cases*

A96 On 8 December 2006 the acting head of RPA’s legal team exchanged emails with the Defra official who was also RPA’s director of policy. They discussed what they called the *“misunderstandings” cases*. The acting head of legal explained that the RPA Interim Chief Executive: *‘was finding it difficult to sustain the arguments for keeping the “hard” line’*. She said that, at the operational management team meeting that discussed the misunderstandings paper, there had been an expectation that RPA would revisit the partial activation issue in the

<sup>83</sup> *The delays in administering the 2005 Single Payment Scheme in England.*

new year. She said the Interim Chief Executive wanted it to be considered before then. She mentioned the difficulties of conceding only on cases where the farmer had challenged RPA's decision. She said: *'The main point that is haunting us (particularly [the Chief Executive]) is the recurrent question of "Why would a farmer have signed an SP5 if he did not intend to establish/activate entitlements?"'* She acknowledged the counter-argument, which was that this was what had happened in the pre-SPS scheme. But she also pointed out the further argument that the misunderstandings were in the first year of SPS and the result was disproportionately harsh on farming businesses. She suggested a fundamental reappraisal based on: *'If we were setting this up now for 2005, but knowing what we now know'* and asked whether the policy director wanted to mention the issue to the DWG (Disallowance Working Group) later that day.

A97 The RPA policy director replied:

*'The difficulty with doing this on any other than a case by case analysis of representations is that this is how we have handled obvious errors cases. The reappraisal you suggest would cause us huge difficulties in terms of opening up cases where we thought the lack of representations meant that the farmer was reconciled to his fate. As well as live representations, we would need to revisit cases rejected under the obvious error guidance. I will raise it this afternoon.'*

The RPA's acting head of the legal team replied: *'Can I just confirm that this was not actually my idea, but I think we all anticipated the mounting pressure [the Interim Chief Executive] will be under.'*

A98 We have seen no evidence of what happened after this email exchange. Defra have told us that they and RPA have no further records or emails on this issue.

A99 In January 2007 the previous Chief Executive of RPA, Johnston McNeill, gave evidence to the House of Commons Environment, Farming and Rural Affairs Committee. Among other things, he said that, on reflection, he did wonder why it had not crossed his mind that there would be a problem if RPA lost staff with experience in dealing with farmers when customer relations were going to be so important. He explained that they were aiming to fill that gap by giving farmers the information they needed by internet – the system would have told farmers where things were going wrong in their claims.

### RPA start their recovery plan

A100 At the end of January 2007 the operational management team discussed the payment schedule for 2006 SPS claims. They noted the political imperative to start payments from the middle of February 2007 and the practicalities of achieving that. In February 2007 they discussed progress on 2006 SPS payments and RPA's recovery programme. The minutes said RPA's three business priorities for recovery were: *'effectiveness, i.e. getting payments out more quickly and accurately, customer service/focus, efficiency and reducing costs'*, in broadly that order. However, they said there was severe pressure from Defra to reduce costs.

A101 In March 2007 the Office of Government Commerce, which had been involved in providing advice on RPA's project planning, published a report called the *Rural Payments*

Agency (RPA) Change Programme 2001-2006. Its analysis included the following points.

*'The Agency vision was basically sound, even if it has the hallmarks of management consultancy thinking and is not particularly differentiated from many others. From the outset however, the RPA agenda reflected a tension between its customer-focus ambitions and the proposed operational design, including the withdrawal from face to face contact and the move to a centralised "factory" style of operation. Other aspects of the tensions implicit in this approach (for example in the Agency's role as a regulator, through its Inspection function) were not explored or understood in any great detail.*

*'From late 2003 through to late 2004 a series of decisions were taken which, in aggregate, invalidated most of the assumptions on which the programme's scope, deliverability and benefits had been predicated. By the end of this period, most if not all of the original objectives (being customer focussed; having a flexible generic system; data being captured primarily through electronic channels etc) were so compromised that the emerging picture was almost diametrically opposed to the vision and indeed to some of the precepts on which elements of the system design had been based.*

*'It might have been an acceptable risk to remove from scope features such as the model office and ad hoc management information, and to play down the need for staff support such as on-line training, when it was still assumed that RITA was basically replicating existing known legacy schemes and processes. However, their*

*absence posed critical risks in the light of the way SPS actually developed. These risks were compounded by the loss of experienced operational staff through the exit programme.*

*'From an external perspective, SPS was characterised by many of the pressures that have created difficulties in other high-profile launches of new government policies – a fixed end-date; delays in finalising the (often critically important) low level detail of the policy, and levels of complexity and novelty in the final version of the product which were not anticipated at the beginning. Although the programme team did well to maintain momentum by documenting and working to a set of assumptions about the way the regime would work, not all of these assumptions held good.*

*'Internally, there were tensions in the relationships between the main parties. For its part, RPA believed that the policy team was not giving sufficient weight to its concerns about deliverability, while the policy teams did not feel that RPA was providing a sufficiently well-defined problem and options statement to allow them to challenge ministerial or EC pressures. Within RPA, there was an additional lack of clarity between the business areas and the programme team, the net effect being a lengthy and highly intermediated communication line between policy and system developers. An external review carried out in July 2004 noted that additional work was required to build confidence and trust between the policy and delivery teams. These relationship tensions made communication difficult at a critical period in the programme.*

*'Partly as a consequence of its various interests, and partly due to a lack of appropriate mechanisms for bringing together and managing trade-offs between the various pressures, Defra was a source of mixed signals to RPA at critical decision points in the programme. The most significant example was the continued pressure to meet cost reduction targets and minimise the likelihood of EC Disallowance even after it had become clear that delivering SPS on time had become the new top priority and that system functions expected to deliver efficiency gains had been postponed or de-scoped. Whilst the message from the top of the office in Defra was that RPA should strike a balance between the disallowance risk and SPS delivery and that efficiency target conflicts could be escalated to Defra, this approach was not consistently recognised in RPA.*

*'Much of the commendable emphasis at the planning stages on customer focus and engaging with the concerns of front-line staff could not be readily accommodated as part of the pervasive drive to make payments to the farming community within the window December 2005 to June 2006.*

*'Provision for taking claims and interacting with customers on-line (the 'e-channel') had been a key feature of the original planning, not least because the data could be subject to preliminary validation in 'real-time' and would then be used to initiate the workflow process. Time constraints and the high risk of diverting resources to its implementation resulted in e-channel being postponed. As repeated modifications were made, including the setting-up of a customer*

*contact centre and the decision to revert to a paper claim form, the business process diverged from the original vision. The absence of the e-channel heralded the move away from customer-led service to back-office tasks where the farmer could not discover who was handling the claim. The difficulty of obtaining up-to-date information on progress of a claim contributed to the overall problems.'*

A102 Also in March and April 2007 members of RPA's operational management team 'adopted' some difficult SPS cases to help them understand the RPA's poor performance in responding to Ministerial correspondence. For example, there were 498 'very urgent' cases, which RPA had had for more than 90 days. They noted how long it could take to obtain advice on a case; that it could take seven days for correspondence about a case to reach a processor; and that caseworkers were not able to track the progress of tasks so that they could follow up on outstanding work.<sup>84</sup>

A103 In March 2007 the House of Commons Select Committee on Environment, Food and Rural Affairs, in its report on RPA's work on SPS, said:

*'The seeds of failure were sown a long time in advance of the final debacle, and many problems were evident even to outsiders well before March 2006. The RPA used a "task-based" approach to dealing with claims which was fundamentally unsuitable and also hindered the Agency's own understanding of the degree of progress it was making in dealing with claims. Defra's policy choice of a "dynamic hybrid" basis of payment was complex and very high risk, and the RPA warned Defra repeatedly of the*

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<sup>84</sup>Operational management team minutes of 13 March 2007 and 17 April 2007.

*risk involved. Defra was more committed to the principle of total decoupling than to the practicalities of implementation. The Defra leadership was at fault for taking the RPA's statements that implementation of the model to deadline was "do-able" as an adequate basis on which to pursue such a risky course. Nevertheless Defra pursued its chosen policy and the Agency was given far too much to do in too short a time. Until the last moment the RPA was optimistic that it would after all meet its targets, but unfortunately this was because it did not properly understand its own business processes or the likelihood of success.<sup>85</sup>*

### RPA try to put things right – 2007 to 2008

A104 RPA continued to revisit cases and policies with a view to correcting errors and improving performance. On 2 July 2007 the Secretary of State said that, as at 30 June, RPA had 98 per cent of the estimated total fund for SPS 2006 to 98.2 per cent of claimants. He said RPA's performance had still to improve and their next step would be to complete work on about 20,000 2005 cases where RPA wanted to review entitlement values. In February 2008 RPA's operational management team agreed to increase the level of checks they did at drop-in centres.<sup>86</sup> RPA's *2007-08 Annual Report*, signed by the chief executive on 14 July 2008, said that at the end of March 2008 their backlog of unanswered post was under 1,000 cases, compared with a peak of 10,000 cases in July 2007. RPA's *2007-08 Annual Report* also said:

*'We continue to change the way we work by moving towards whole case working. Two significant information technology (IT) system improvements in 2008 will give our case workers access to most of the information they need about a farmer's SPS claim ...'*

### Handling complaints in 2009

A105 In March 2009 RPA's operational management team noted their concerns about the way they failed to update customers still waiting for a large payment, although RPA had met their target of paying 90 per cent of claims by 31 March. They decided to make a list of 'high value and difficult customers' so that they would arrange for 'sensitive outward bound communication to these customers who are still awaiting a payment'. The same meeting included a paper that explained that RPA's customer strategy was to increase customer focus. It said that they would support their aims of efficiency, effectiveness and customer service. The paper made several points, including that staff's perception was that management were still more interested in statistics than meeting customers' needs and staff believed that the system had been built to manage SPS rather than serve customers. It also set out the work intended to improve customers' experience of RPA.<sup>87</sup>

A106 At the same meeting they noted the issue of non or underdeclaration of land by SPS claimants and considered a paper that outlined the risks of and issues in adopting a stricter approach to applying penalties to

<sup>85</sup> Paragraph 5 of the House of Commons Select Committee on Environment, Food and Rural Affairs report: *The Rural Payments Agency and the implementation of the Single Payment Scheme*, published in March 2007.

<sup>86</sup> Operational management team minutes of 24 June 2008.

<sup>87</sup> Operational management team meeting of 24 March 2009.

customers who had not declared all their land. The paper recommended delaying a stricter application of this approach until 2010. The meeting agreed, but raised concerns over disallowance risks and the ability to put a figure on the possible disallowance.

A107 In August 2009 RPA's operational management team considered a presentation on their complaints improvement process that described continuing problems in RPA's complaint handling.<sup>88</sup> These included:

- *Lack of definition/distinction in terms of what constitutes a complaint.*
  - *Complaint against decision*
  - *Complaint against treatment*
- *A single letter of complaint can pass between up to 13 pairs of hands, yet will typically end up back with the case worker.*
- *No visibility on the number of complaints being resolved at the various stages in the process.*
- *15 day deadline directs the focus on 'response' rather than 'resolution'.*

The presentation said the need for experienced staff and the empowerment of customer champions were key factors needed to improve the complaints process. The meeting minutes also noted that the chief operating officer reinforced the importance of the work on complaints improvement.

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<sup>88</sup>Operational management team meeting of 25 August 2009.

## Annex B: RPA guidance for farmers

B1 In May 2004 the Minister responsible for the implementation of the SPS wrote to the Defra mailing list of 180,000 about SPS and the deadline for returning SPS claims. RPA produced a range of information booklets about SPS from July 2004 onwards, including a sample SPS claim form in February 2005. In February and March 2005 they ran 32 seminars for farmers, in 16 places around the country. About 8,500 people attended these seminars.

### The SPS Handbook and Guidance for England 2005

B2 The *Single Payment Scheme Handbook and Guidance for England 2005* (the 2005 Handbook), printed in February 2005, set out RPA's interpretation of SPS rules. The extracts here are those particularly relevant to the complaints about RPA's handling of 2005 claims to SPS.

### Establishing and activating

**A Introduction, paragraph 2:** *'... Farmers who are carrying out an agricultural activity can only apply to SPS in 2005 to establish entitlements for the eligible agricultural area on their holding ...These entitlements can be activated in 2005, and then every year for as long as the scheme continues, to generate a support payment. ...*

**C What land can be claimed under SPS?, paragraphs 52 to 56:** *'... If your land is registered on the Rural Land Register you should use the details supplied on your maps to complete columns B and D of the Field Data Sheet [part of the SPS claim form] ... Most farmers will have some, if not all, of the information on their land pre-populated on the SPS application form. This will not be the case for land that is not land which was digitised after the end of*

*January and land that was submitted on an IACS 22 after September 2004 ... If your land has not been pre-populated, you will have to complete that part of the application form by hand ... If the IACS 22 or new registration of land has not been completed then you must still enter the parcel on the application form if it is agricultural land ... If you have land that you wish to include on your application form, but it has not been registered before, please fill out the details on the application form and complete an IACS 22 form ...*

**E Entitlement to payment, paragraph 66:** *'Payment entitlements form the basis of the SPS. If you hold an entitlement you have the right (subject to certain conditions being met) to claim a payment under the scheme. There are two main types of entitlement, "normal" and "set-aside". You must establish your right to an entitlement before you can activate it (claim payment against that entitlement). You may decide to establish your entitlements but not activate them, in which case you will not receive any payment against them in 2005, but you should be aware of the rules on use of entitlements set out below. Establishment of entitlements is a one-off exercise for 2005 only.*

**E Entitlement to payment, paragraph 70:** *'You need to establish the number of entitlements you can hold in 2005, the first year of the scheme. You do this by completing the SPS application form ... You can establish entitlements for land that is on your holding when you apply even if you cannot activate (make a claim upon) that entitlement for example because you will not have it for the whole of the ten month period you have chosen.*

**E Entitlement to payment, paragraph 79:**

*‘Once you have established entitlements, they can then be activated for payment (claimed) in each year you apply under the SPS. For 2005, establishment and activation of entitlements will be undertaken at the same time on the same application form.’*

Section O of the 2005 Handbook was about completing the claim form. Paragraphs 319 and 320 gave this information about column I (establishing entitlements) and column J (activating entitlements).

*‘Column I – Area for which entitlements to be established*

*319. Enter the area of each parcel on which you wish to establish entitlements. Ensure that the area to be established is eligible for SPS. Areas of non-agricultural use such as ponds, metalled footpaths etc. must be deducted.*

*‘Column J – Area for which entitlements to be activated*

*320. Enter the area of each parcel on which you wish to activate entitlements. This land must be at your disposal for at least 10 consecutive months of the scheme year. You cannot activate entitlements on land where the entitlements have not been established.’*

**Entitlements subject to special conditions**

- B3 Section G of the 2005 Handbook, *‘entitlements subject to special conditions’*, was for farmers who did not fit the land-based criteria for payment of subsidy under SPS. Farmers could claim *‘special entitlements’* if their earlier entitlement to agricultural subsidy (which RPA used to calculate part of their entitlement under the new Scheme) had been based on having animals, without any

land. They could be in a position of having no land in 2005 or a very small area of land. The 2005 Handbook explained that payment for normal entitlements depended on the farmer having enough eligible hectares at his or her disposal. With special entitlements, payment depended on the farmer meeting certain conditions about the number of livestock he or she had on his or her holding in the year of the claim. Some farmers with little or no land could be disadvantaged by the SPS €5,000 ceiling on the unit value of entitlements if they claimed only normal entitlements. Special entitlements gave farmers a way to avoid that. Here is the text under the heading *Activating Special Entitlements for payment – paragraphs 163 to 166.*

*‘163. RPA will establish a base level of activity for the reference period by calculating the 3-year average of the number of animals determined for payment under all of the schemes listed above, expressed in livestock unit equivalents (LUs). The following conversion factors will be used to make this calculation ...*

*‘164. Where several payments were claimed on the same animal during the reference period, the LU figure used will be the average of those that would apply for each individual payment.*

*‘165. To activate all of your Special Entitlements for payment in 2005, you must maintain at least 50 per cent of the level of animal production that you had in the reference period, again expressed in LUs. If you are also claiming Normal Entitlements, the level of livestock production required to activate all of your Special Entitlements will reduce slightly as some of the production in the reference period will be attributed*



to that land. If, however, you do not reach the threshold to activate all of your Special Entitlements, you may still be able to activate a proportion of them.

*Example A farmer has two Special Entitlements and a total LU requirement of 10 (i.e. his calculated average for 2000 – 2002 was 20 LU). If he maintains 4 LU or less, he would receive no payment on those entitlements. Between 5 and 9 LUs, he would be paid on one Special Entitlement. If he has 10 LU in 2005, he would be paid on both.*

*'166. RPA will contact affected farmers directly to tell them the number of livestock units that they had in the reference period and to explain how the level of livestock production being maintained in 2005 will be verified.'*

(RPA said in their April 2005 Handbook supplement that RPA 'would check the activity maintenance requirement on a date to be announced'.)

### **Authorised entitlements – fruit, vegetables and potatoes**

- B4 The 2005 Handbook gave the following information about payments for fruit, vegetables and potatoes.

*'170. Under the SPS, growers of certain horticultural crops and potatoes are now eligible for a direct payment provided they meet the terms and conditions of the new scheme.*

#### **Authorised Entitlements**

*'171. Entitlements can be established on eligible land growing fruit, vegetables and potatoes (fvp) in the same way as other eligible land. However, if you wish to use*

*land that you are using to grow fvp (as specified below) to activate entitlements, then you will need to be in possession of "Authorised Entitlements".*

*'172. Authorised Entitlements are exactly the same as normal payment entitlements except that they allow you to use your entitlement to claim against eligible land on which you are growing fvp. Authorisations provide the opportunity to produce fvp and still receive the Single Payment. However an Authorised Entitlement can also be activated for payment on eligible land growing other crops or simply being retained in GAEC. [Good agricultural and environmental condition, as delivered by EU regulations.]*

#### **Applying for Authorised Entitlements**

*'173. To apply for Authorised Entitlements you must apply to establish Normal Entitlements. The RPA can only allocate horticultural authorisations by attaching them to entitlements already established by the applicant.*

*'174. If you wish to apply for authorisations, you must provide details of the parcels of land that you used to produce fvp in 2003 and 2004 and are using in 2005, in addition to the other general requirements of the application form. You must also declare that you were the person responsible for growing the crops. You may be asked to provide evidence such as production or sales records.*

#### **Eligibility**

*'175. If you were growing fvp during 2003 you will have first claim on authorisations available. You do not need to be growing any fvp crops in 2005. If your production*

*was adversely affected by force majeure or exceptional circumstances in 2003, you can ask to be considered under special hardship provisions which take account of reduced production in that year.*

*'176. Similarly, if in 2003 you were producing fvp in circumstances that would enable you to apply to the National Reserve, you may be eligible to receive additional authorisations. Details on applying for additional authorisations will be made available as soon as possible.*

*'177. Authorisations and entitlements go hand-in-hand. You have to be able to establish entitlements in order to receive authorisations. It is not possible for two separate parties to do this and then join the two parts together. Once an Authorised Entitlement is issued the two parts cannot be split. You cannot claim a number of authorisations which exceeds either your highest annual production in the 2003-2005 period or the number of eligible hectares you declare in 2005. If you have reduced the area of land you farm since 2003 you will receive authorisations only on the land that you declare on your 2005 application form.'*

### **The claim form**

B5 Section O was intended to take farmers through the process of completing the claim form.

*'This form allows you to apply for the Single Payment Scheme, Area Payment for Nuts, Aid for Energy Crops, Protein Crop premium and 2006 Hill Farm Allowance. It also covers application to the National Reserve. These notes refer to the application form for England which is in 4 parts:*

*'SP5a – "Application for the Single Payment 2005..." This asks for general information about you as an applicant, the land you farm and the payments you wish to claim in 2005.*

*'Annex 5b – "Field Data Sheet: English Area Summary". This asks for information on individual fields and the entitlements you wish to establish.*

*'Annex 5c – "Field Data Sheet: Common Land". This should be completed if you wish to establish and/or activate entitlements on common land.*

*'Annex 5d – "Application for Horticultural Authorisations – Land Information". This should be completed if you are applying for horticultural authorisations or hardship relating to horticultural production.'*

B6 In the same section, O, the guidance explained that:

- sections B and C of the SP5a section asked claimants to cross yes/no to confirm whether or not they wanted, respectively, to establish and to activate their entitlements for the land they had listed;
- column I of Annex 5b of the claim form was for claimants to record the area of each parcel of land for which they wanted to establish an entitlement; and
- column J in the annex was for claimants to record the area for which they wanted to activate an entitlement. (The area in column J could be smaller than the area in column I.)

### **Reductions and exclusions**

B7 See also paragraph B2, which gives the information for establishing and activating entitlements that was included in

paragraph 320 of section O on the claim form. It said:

*'Enter the area of each parcel on which you wish to activate entitlements. This land must be at your disposal for at least 10 consecutive months of the scheme year. You cannot activate entitlements on land where the entitlements have not been established.'*

B8 The Handbook also gave farmers information on how RPA would treat mistakes. The following extracts come from section Q *Reductions, exclusions and correction of error.*

*'Mistakes in applications which can be classified as an obvious error according to EC Regulations, and where the RPA is convinced that the farmer acted in good faith and there is no risk of fraud, can be corrected without reduction at any time. The following types of error may be considered as obvious errors, but each case will be considered on its own merit:*

*'i) Errors of a purely clerical nature, which are obvious during a simple examination of the application, i.e. boxes not filled in or information lacking, incorrect statistical information.*

*'ii) Errors detected as a result of a contradiction appearing during a more in-depth examination (manual or computerised) of the application, which compares information (including supporting documentation, such as a map) submitted in the same application, i.e. arithmetical mistakes; inconsistencies between the information provided on the same application (for example, a parcel declared twice in a single claim); parcels declared for*

*two types of usage (for example, set-aside and protein crops).*

*'iii) Anomalies involving parcel numbers or reference which are detected during the cross-check of the application with databases such as the parcel identification system, i.e.: figures reversed (parcel no.1169 instead of 1196); mistakes in the maintenance assessment p reference number; number of a neighbouring parcel given, resulting from a map reading error.'*

Under the heading *'Force majeure and exceptional circumstances'* the 2005 Handbook said:

*'In limited circumstances it may be accepted that you are prevented from fulfilling certain of your obligations due to a course of events amount to either force majeure or exceptional circumstances. Where this is recognised to be the case, reductions normally associated with such failure may not have to be applied. Force majeure is defined as "unusual circumstances, outside your control, the consequences of which, in spite of all due care could not be avoided except at the costs of excessive sacrifice on your part". Examples of force majeure and exceptional circumstances which may be recognised include: the death of the farmer; long term professional incapacity of the farmer; a severe natural disaster affecting the holding's agricultural land ... If you wish consideration to be given to an event which you think amounts to force majeure or exceptional circumstances you must notify the RPA in writing within 10 working days of your being in a position to do so ... You can make amendments to your application to add agricultural parcels ... and you can amend your application to show changes regarding the use and the aid*

*scheme in respect of individual parcels already included in your application up to and including 31 May [unless the RPA had already notified the claimant of an error or of an inspection which then revealed errors].'*

Under the heading 'Notified error' the 2005 Handbook said:

*'The regulations also allow corrections to be made to the application at any time provided you notify RPA in writing before you have been notified of the error in your application or notified of an inspection which subsequently reveals errors.'*

*'Late applications can only be submitted up to 25 days late – after this they will be inadmissible and no entitlement for SPS will be established. No payments will be made. Except in cases of force majeure and exceptional circumstances, submission of applications after the 16 May deadline will lead to a reduction of 4 per cent per working day in the amount you would have received based on the entitlements you activate that year ... If your application arrives after the 10 June 2005 no payment entitlements will be allocated to you and you will receive no payment under the SPS.'*

### The April 2005 supplement

- B9 On 12 April 2005 RPA announced it was sending out an 18-page Handbook supplement. The supplement included a section called 'Common Errors on Application Forms'. Under the category 'incomplete forms' it said: 'It is vital that forms are complete. In particular Column 2 on Establishment and Column J on Activation of the Field Data Sheets must be fully completed for you to receive payment'.

### The 2005 claim form – declaration

- B10 The claim form itself contained a declaration to be signed by the farmer.

*'Part 5 Declarations and Undertakings (Please see section O of the guidance) I confirm that I am a farmer within the meaning of Article 2(a) of Council Regulation (EC) 1782/03, as set out in section B of the guidance.'*

*I am aware of the conditions pertaining to this, my application, and have complied with them.'*

*'I have complied with the current versions of Council Regulation (EC) 1782/2003, and with the Commission Regulations implementing the Regulations, including (EC) 795/04, (EC) 796/04, (EC) 1655/04 and any other application legislation, and if I am applying for HFA [Hill Farm Allowance], I will comply with the relevant parts of Council Regulation 1257/99.'*

In 2006 this continued 'and 1698/2005'.

*'I have read and understood all of the relevant guidance notes including, if it applies to my claim, the HFA explanatory booklet for 2006.'*

*'I have given details that are true, accurate and complete to the best of my knowledge and belief on this form, Field Data Sheet(s), Common Land Data Sheet(s), Horticultural Land Data Sheet(s) and any continuation sheet(s). I will advise the RPA of any material change to the information given in this form.'*

*'If claiming for Hill Farm Allowance I undertake to pursue my farming activity in a Less Favoured Area (as explained in*

*the HFA explanatory booklet) for at least 5 years from the payment of compensatory allowance.'*

There was also a warning, in bold type, above the space for the farmer's signature.

*'WARNING: Any person who makes a false declaration or fails to notify the RPA of a material change to the information given in the form is liable to prosecution. A false, inaccurate or incomplete statement or failure to notify the RPA of any material change to the information given in this form may result in loss of entitlement and/or recovery of any payments made.'*

The 2006 claim required a similar declaration by farmers.

### The 2006 SPS claim form and SPS Handbook

B11 The main practical difference between the 2006 SPS claim form and the 2005 form was that claimants had only to activate their entitlements – they had already established them in 2005. There were substantial changes in the approach that RPA took in the presentation of the 2006 forms. The 2006 sample claim form included clear signposting to claimants about what to do. For example, on the sample field data sheet where claimants would detail their land, column C10 had a prominent label saying: *'You must complete the boxes in column 10 if you wish to claim SPS on a land parcel. If you do not complete the boxes in this column you will not be paid on this land parcel'*. In 2006 they showed that they wanted to activate entitlements in two parts of the form: part C and part E.

B12 In part C claimants recorded each land parcel. This part of the form was pre-populated by

RPA, if possible, and marked how much of each parcel they wanted to activate. There was also an area where they could provide the total areas they had activated, split by set-aside, areas under fruit, vegetable and potato crops and the area of all other eligible land. The form said:

*'Totals for this sheet from Column C10: The areas that you enter in Column C10 of the field data sheet should be used to complete Part E of the application form. To help you do this, you can use the total boxes at the bottom of each sheet and summarise the results in the table provided. These totals do not form part of your application. We will rely on the information given for each land parcel.'*

B13 In Part E: Claim for Single Payment the form said:

*'Use this section to tell us which of your Single Payment entitlements you wish to activate/claim payment on. For each line below either cross the box in column E6 to activate all of the entitlements relevant to that line, or complete the boxes to tell us the number of entitlements you wish to activate (claim payment on). If you have disposed of any entitlements that are still listed here, you must only activate up to the number that you still have available. If you have acquired entitlements that are not shown here, use the blank rows to add these to your claim.'*

B14 The 2006 Handbook, in the section about the claim form, listed some dos and don'ts for completing the form. Among other points, such as reminding claimants to use original forms, it said: *'Do remember to complete column C10 to show that you want to activate*

entitlements against a particular parcel and/or D10 to activate common land'. It also said: 'Don't forget to complete column C10 to show you want to activate entitlements against a particular parcel'.

### Mapping advice for 2006

B15 The 2006 Handbook gave the following guidance on questions that might arise about the Rural Land Register when farmers completed their 2006 claims, under the heading 'Registering land on the Rural Land Register':

*'C48. All the land forming part of your 2006 claim should be registered on the Rural Land Register (RLR). In addition, SPS rules require that all other agricultural land on your holding must be included in your application.*

*'C49. Your application form will be preprinted with the field data shown on your RLR map. However, if at the time your form was preprinted, the validation of your 2005 form was not complete, some fields may not appear or may require amendment. If this is the case you still need to ensure that you include all the agricultural land on your holding accurately.*

*'C50. If there have been changes to field boundaries since the map was produced, or you wish to include land on your application form that has not been registered before, you should complete form RLE1 in order for changes to be made. You should include a map of the land. RLE1 forms are available from the Customer Service Centre. A sample form and guidance are available on the website. The old IACS22 form will not be accepted.*

*'C51. If you submit an RLE1 well in advance of the May deadline for SPS applications, you should receive confirmation of any new field numbers and areas in time to make corrections or additions on your application form by hand.*

*'C52. If you do not have the new field numbers and sizes before the deadline for submitting your SPS application, you should still enter the field on the form if it is agricultural land. You should quote the field reference you have (as on the RLE1, if you have submitted one) and the size in hectares to two decimal places. If you have made allowance for ineligible features, these will be deducted to give a new total area for activating SPS entitlements for that field.*

*'C53. If your RLE1 is still outstanding, do not resubmit it with your claim form but send a covering letter explaining clearly which fields are still outstanding. If you have not submitted an RLE1 to notify us of new land or changes, and do so with the SPS form, there must be an accompanying map for any new land. If you do not send a map, and we cannot therefore identify the field, it will be rejected for payment.'*

B16 The 2006 Handbook also had a section called 'Entitlement to payments'. Among other things, it said: 'For each hectare of eligible land you declared on your 2005 SPS application form, you will have received an entitlement to claim payment under the SPS'. Under the sub-heading 'activating entitlements', it said:

*'The entitlements you hold can be activated for payment (claimed) in each year you apply under the SPS. Before you can activate all your entitlements, you must have at least an equal number of eligible*

*hectares at your disposal for a period of at least 10 months.'*

Another part of the 2006 Handbook explained the 10-month rule.

B17 In 2005 and in 2006 the Handbooks gave details of how to complain.

## Annex C: Mr D – an extract from his letter to one of my investigators

- c1 *Following our telephone discussion, I have tried to summarise the impact on my family of the protracted dealings with the Rural Payment Agency over my 2005 Single Farm Payment and their eventual refusal to pay.*
- c2 *Whilst I do not accept the harsh way DEFRA penalise genuine mistakes with no effective route of appeal or redress, I can see that they might argue that I was the cause of my own financial misfortune through my mistake on the SPS application. However, I do still think that there was enough contradictory information on that form for them to question it, and I certainly believe that the impact of their refusal to pay has been made much worse and the financial losses much greater because of the delays, obfuscation and confusion which eventually stretched over fifteen months.*
- c3 *I have always run my farm business in a conservative way, usually having a surplus in the current account at year-end (£4,000 in 2005). As a good credit risk I had medium term financing available to me at a reasonable cost, and if I had known at the beginning of this shambles (April 2006), that I definitely would not be paid, I could have planned a more structured way of overcoming our financial problems, instead of constantly playing catch up with overdrafts. I would have been pretty annoyed, but I do think that we could have avoided some of the things that happened which cannot now be reversed.*
- c4 *When the new Single Payment System was introduced, farmers were not expecting their payment before Spring 2006, compared to what would have been Autumn 2005 under the previous scheme (IACS). Consequently, most farm businesses were already seriously stretched on cash flow and I took the precaution of extending my nominal overdraft facility (which I hardly used), in readiness. When the delays and uncertainty began in April my immediate response was to increase the short term overdraft limit again as needed. None of us could foresee that this was the start of 6 months of confusion, false hopes and delays.*
- c5 *The haphazard way in which several other farmers I knew were being treated by the RPA suggested we were all in the same boat, and it was just a case of getting the system to work properly for payments to follow. I was not told at any time that I would not be paid until I received a copy of the Minister's letter to my MP in October (the same month that [name] at the RPA told me that I would be paid).*
- c6 *As the time dragged on I continued to increase the facility, eventually to £13,000. The farm accounts for 2006 and 2007 show overdrafts of £8,000 and £5,500. Meanwhile I managed to secure up to 25 hours per week additional contracting work on top of my farm duties in order to bring in some cash.*
- c7 *During this period, [my wife's small] business needed a cash injection for stock and further development which I was unable to provide. As RPA payment seemed to get further away we arranged the first ever overdraft for this business in 2006, but I was unwilling to commit serious investment until I got my Single payment and the business continued to decline. Unfortunately, it had to be closed for good in 2008, after 19 years trading. [My wife] has been forced to find part-time work away from the farm to secure some income.*
- c8 *As debts increased I reluctantly sold some land in 2007 to pay off the bills, since the rental income could not do this. I received £4,000 per acre, whereas if I had been able to pick my*



- own time for sale (2009 or 2010 for example), I would have got £6,000.
- C9 *We had to reduce costs wherever we could, and have not had a family holiday (we have 3 children) since this episode in our lives began. There has been no investment in the farm at all (my combine harvester is 29 years old), and necessary maintenance on our home has been deferred.*
- C10 *I now have so little confidence in my ability to complete the SPS claim forms (which change in detail every year), correctly, that I employ a specialist to do it – this costs £300 per year. It seems very unfair on small businesses that this is necessary.*
- C11 *It is difficult to quantify the psychological strain of having hopes raised and dashed repeatedly over the first six months of this ordeal. It was not helped by frequently being unable to speak to anyone who knew the facts or by the continued failure of the RPA to return calls.*
- C12 *It put great stress on us, and [my wife], particularly, became very depressed, fearing the worst. When I finally discovered in October that I would not be paid (NOT from RPA, but from the Minister's letter to my MP), I felt that I was being ushered in to the Appeals process as the next stage in securing my payment. [...]*
- C13 *With hindsight, we had no idea how narrow the scope of the Appeal is and how limited the powers of the Panel are. In fact it was made clear that much of the process (Notified Error provisions, for example), was designed around preventing fraud. This made me feel quite uncomfortable and was made worse by a member of the Appeal panel asserting that they only had my word that the RPA had*
- promised me payment on 13 October (in the famously lost telephone transcript). After all, it was only my honesty that had got me into this mess in the first place! I felt I had to ask for confirmation that they did not consider my actions to be fraudulent.*
- C14 *I did not get much sleep over this period.*
- C15 *To add insult to injury, the whole Appeals fiasco took another 8.5 months of uncertainty, considerably exceeding the timescale laid down in Defra's own Appeals Procedure and the verbal promises made at Stage 2 to let me know within 14 days.*

# Annex D: RPA's 2006 paper on 'misunderstandings' and partial activation

H. 65/  
7

POLICY PAPER ON NOT FULLY ACTIVATED 2005 CLAIMS  
ISSUE

*5000 3 D . - c 2/3 weeks for all (some/abuse) many info impact on 2006*

There are several thousand claims (11,331) where the applicant has not activated all the entitlements that they have requested to be established.

In cases where no activation has been indicated at all, an inconsistency in the information given means that 'obvious error' can often be applied to correct the anomaly (see Annex Case 1).

However, in cases where some, but not all, land is claimed for activation it has been acknowledged that this is not in itself an inconsistency - as the ten month rule applies to column J but not column I - and obvious error does not therefore apply. The current line is to consider these cases to be outside the obvious error provisions and generally incapable of remedy.

The question has been raised as to whether or not the RPA should sustain this line in the face of numerous cases in which the applicant appears to have misunderstood the scheme rules or requirements of the application form.

An option is to fast track representations for such cases, accepting a statement from the customer that they failed to complete the form in error. It has been established that Scotland, Wales and Northern Ireland review individual cases against the 'obvious error' provisions and would be reluctant to move to a 'blanket' consideration of representations without scrutiny of individual cases. At OMT on 22 August, it was agreed that examples of representations currently under consideration would be reviewed to establish whether guidance could be further developed to facilitate the resolution of such cases.

This paper therefore looks at two questions:

1. Can these partially activated cases be considered on a 'blanket' basis?
2. Can a simple remedy be applied which is outside the obvious error guidance/principles and the amendment rules?

LEGAL OPINION

**Obvious Error:**  
The Commission produced a working document (CWD) AGR 49533/2002 on obvious error but did not reissue specifically for the SPS regulations. Article 19 of Regulation 796/2004 which states "without prejudice to Articles 11 to 18, an aid application may be adjusted at any time after its submission, in cases of obvious errors recognised by the competent authority".

However misunderstanding scheme rules is generally not the basis for obvious error. One key requirement is that there is an inconsistency in the application form that would give rise to a suggestion of obvious error. In addition, cases should be looked at individually, to ensure there is no indication of fraud.

Basically, for obvious error to apply, an inconsistency is a prerequisite, as is working on a case-by-case basis.

**Amendments:**  
A claim can be amended upwards but only until the 10 June as that was the latest date for a claim to be submitted in 2005.

**Disallowance:**  
If RPA were to concede these cases it would not be on the basis of obvious error or regular amendment. There would therefore be a strong risk of disallowance from the Commission (up to 100% of affected 'ring-fenced' claims) but as this is the first year of the new scheme this may be reduced.

#### Administrative Discretion:

A decision to accept cases without regulatory basis is a serious step which could lead to pressure to extend the 'principle' with no basis to 'draw the line'. It should therefore be seen as a high risk option in domestic as well as disallowance terms. In terms of processing, it would be difficult to set ground rules and to control the cases to be accepted.

#### CASE REVIEW

The review has covered cases currently under consideration by the Customer Relations Unit and the Delivery Unit in Northallerton. The current guidance permits acceptance of representations in circumstances where the reviewer can identify any inconsistency in the completion of the claim form which could indicate that the claimant intended to activate entitlements. The annex summarises five cases which have been subject to review. Further details of cases which have been reviewed or are still under consideration are detailed in the attached spreadsheet. In addition, consideration has been given to analogous situations that RPA may be expected to accept for amendment if it was decided to accept non-obvious error 'misunderstandings' on activation cases. These are set out after the first five case summaries in the Annex.

#### OPERATIONAL IMPACT

The current guidance has permitted the acceptance (as obvious error) of some of the representations already received. However, the procedure is time-consuming and it may not be feasible to maintain the current level of scrutiny, in the event that representations are received from large numbers of claimants who did not activate all of their entitlements. A shift to a policy of accepting representations with no more than superficial scrutiny carries the risk that Commission auditors will conclude that these are not obvious errors and that disallowance should follow. Maintaining a case-by-case scrutiny of representations against precedents mitigates that risk somewhat but it does not eliminate it.

If it is decided to accept the risk of accepting activation 'misunderstanding' cases, the pressure to accept analogous cases is likely to build and categories are difficult to predict and quantify. In addition, once the industry is aware of the softened stance (It is not suggested that this is advertised but dealt with as representations are made, but it will soon be clear to stakeholders that this is happening) there may be pressure to rework previously settled cases as well as extend the principle.

#### RECOMMENDATION

( On the basis of the review, it would be difficult to justify an approach which does not test the intentions of the claimant against the guidance on obvious errors on a case by case basis. However, should OMT decide that additional guidance should be issued to enable payments to claimants who can demonstrate a genuine misunderstanding of the scheme rules, then a register of cases accepted should be maintained, so that any disallowance risk can be ring-fenced. Such a decision would also need to be referred to the Disallowance Group for advice but the Group has seen an earlier draft of this paper, without raising particular concerns. This approach is dependent on a case by case examination of representations as the combined risk of a move beyond obvious error rules and a blanket acceptance of representations based on a misunderstanding of scheme rules is too great to justify.

## ANNEX A

### CASE 1

Farmer ticks box stating that he does not wish to activate, fills out nothing in column j where activation is noted on the claim form, does not complete the activated area on the optional summary sheet, but does state a 10 month period. The stating of the 10 month period has been noted as an obvious inconsistency as you are only required to state a 10 month period if you are activating an area.

CASES LIKE THIS HAVE BEEN ACCEPTED AS OBVIOUS ERROR.

### CASE 2

Farmer ticks yes to activate, activates his non-SDA region but not the land in the SDA region. He does however put a total area to be activated in the summary box for SDA land. This is inconsistent and his representation to activate all his land has been upheld.

CASE ACCEPTED AS OBVIOUS ERROR.

### CASE 3

Farmer indicated she did not wish to activate her entitlements. She fills out a total area to be activated in the summary box then crosses it out and does not amend. She activates several small portions of fields on her claim but claims that she intended to activate entitlements on all of her land. There is an inconsistency and the claim has been accepted as an obvious error on the areas she activated. The case is a rural stress case and she stands to lose some £26,000 pounds.

CASE TO ACTIVATE THE REMAINDER OF THE PARCELS IS NOT ACCEPTED AS OBVIOUS ERROR.  
HOWEVER, THIS SHOULD BE CONSIDERED A CANDIDATE FOR 'MISUNDERSTANDING' THE RULES.

### CASE 4

Farmer indicated she did not wish to activate entitlements. A date was entered on the ten month period question. Only some small areas of land equating to 2.12ha was entered into column J for activation.

OBVIOUS ERROR ACCEPTED FOR THE INCONSISTENCY IN TICKING 'NO' TO ACTIVATION BUT COMPLETING COLUMN J FOR SOME FIELDS.

OBVIOUS ERROR REJECTED FOR THE ACTIVATION OF THE REMAINDER OF THE FIELDS AS NO INCONSISTENCY.

HOWEVER, THIS CASE SHOULD BE CONSIDERED A CANDIDATE FOR 'MISUNDERSTANDING' THE RULES AS SHE CLAIMS TO HAVE THOUGHT THAT THE AREA IN J WAS FOR THOSE PARTS OF THE FIELDS THAT WERE INELIGIBLE FOR ACTIVATION.

### CASE 5

Farmer ticks yes to establish but no to activate. No data is entered in column J and the 10 month rule question has also been left blank.

CASE REJECTED AS NO INCONSISTENCY OBVIOUS TO RPA PROCESSING STAFF

THIS COULD BE CONSIDERED A MISUNDERSTANDING CASE IF THAT IS THE EXPLANATION FROM THE APPLICANT.

POSSIBLE SITUATIONS FOR CONSIDERATION AS 'MISUNDERSTANDING' CASES.

[The relevant parts of Cases 3 – 5 may be considered examples of 'misunderstandings' as indicated above.]

#### CASE 6

Insufficient set-aside

This could be a 'misunderstanding' especially in the case of livestock farmers growing fodder maize on what land was eligible for set-aside and therefore did not enter enough set-aside. A variation on the above would be a farmer who could not work out the maths properly and did not set enough land aside.

ANALYSIS TO QUANTIFY THIS GROUP IS NECESSARY BUT IN PRINCIPLE MAY BE ACCEPTABLE PROVIDED THE RULES FOR THE MANAGEMENT OF SET-ASIDE HAVE BEEN COMPLIED WITH. ACCEPTANCE DESPITE NON-COMPLIANCE WITH THESE RULES INCREASES THE DISALLOWANCE RISKS IN THIS CATEGORY. There is a difference between a misunderstanding of how to fill out the form and what is actually happening on the ground.

#### CASE 7

Wrong crop Group:

Could have entered pc which is the code for permanent crops and actually they meant that the field was permanently cropped. These cases have in some circumstances been allowed but we would have to look carefully at the knock on effects of whether or not they had enough set-aside.

#### CASE 8

Dual claims where there was a misunderstanding between landlord and tenant as to whom should or would claim.

The Commission has already in a bilateral with DARD rejected these cases and wish to see one applicant penalised.

THIS CATEGORY REPRESENTS A HIGH DISALLOWANCE RISK.

#### CASE 9

Late Claims:

There should be no 'misunderstanding' here as it was very clearly advertised what the deadlines were.

THIS CATEGORY REPRESENTS A HIGH DISALLOWANCE RISK. DECISIONS HAVE ALREADY BEEN MADE TO ACCEPT SUCH CASES.

#### CASE 10

Errors Found at Inspection:

These should be treated in the same way as errors found at administration checks so if the farmer appeals we look at it against criteria agreed for the misdemeanour committed.

THESE ARE NOT A SEPARATE CATEGORY.

## Annex E: The nine complainants: their stories in more detail

### Mrs A

#### About Mrs A

- E1 In 2005 Mrs A owned about 33.5 hectares (86 acres) of land in the South West of England. She ran a livestock farming business. The value of her 2005 SPS claim would have been about £13,879<sup>89</sup> if she had activated her entitlements as she intended. She has told us that she kept her land but sold the bulk of her stock in 2008 because the paperwork and the hassle had become too much. Her last eight cattle will go this autumn.
- E2 Mrs A has told us that, before SPS, she had taken her claim forms to RPA's Exeter office every year, where someone would go through them. That checking service was not available for 2005, although it was still possible to hand-deliver the form. She has told us that she had found out that the checking service was not available for 2005 from RPA publicity. Mrs A has said she also believed that, if there was a problem with a form, RPA would contact claimants if necessary.

#### The 2005 claim

- E3 On 13 May 2005 the Northallerton RPA office received Mrs A's 2005 SPS claim, the SP5. On the form Mrs A had said 'no', where it had asked her whether she was applying to activate her entitlements. She had made no entries in column J of the field data sheets which asked for the 'area for which entitlements to be activated'. She did not provide a specific date in response to question 5 on form SP5a (an annex to the SP5) asking about the date from which her land would be at her disposal for a continuous
- period of 10 months. The form also said that the summary tables on the field data sheet were not part of the claim, but could be completed for the claimant's own records. Mrs A put a figure for the total area on which entitlements were to be established – 33.46ha – in the summary tables. But she put nothing about the area to be activated.
- E4 Mrs A has told us she had got used to basing her form on the previous year's claim, but in 2005 she had no form for comparison; and that there was too much guidance. She said she was not the greatest form-filler at the best of times, but RPA forever bombarding her with paper made things worse. She also said the agent's fee of about £250 was not worth the expense for so small a farm. She had turned to an agent for the appeal because the issues were too complex for her to deal with.

#### RPA's handling of the claim from May 2005 to March 2006

- E5 On 14 May 2005 RPA completed the initial checklist for Mrs A's claim to establish that it had the basic information needed for a valid claim. On 15 June 2005 RPA completed a further checklist when they keyed in her claim. The papers we have seen show no contact between RPA and Mrs A for the next eight months.
- E6 On 16 February 2006 RPA sent Mrs A her definitive entitlement statement (see glossary), that showed the value of her entitlements as €20,351.27. They said that if she had applied to activate her entitlements under the 2005 SPS, she would shortly receive payments based on the entitlement information shown on the statement. On 15 March 2006 RPA paid Mrs A

<sup>89</sup>Her 2005 entitlement statement put her entitlements at €20,351.27. The 2005 SPS euro conversion rate was €1 = £0.68195.

£5,141.85 for the 2005 SPS. (This payment should have been zero, because her claim form had not activated any entitlements.)

E7 We asked Mrs A about the length of time it took for RPA to tell her about payment. She could not remember how long she would have waited for notification of payment under IACS, but she told us the wait had not mattered then because, with the local checking service, she had been confident that the form was all right.

### **Mrs A's representations to RPA from March 2006**

E8 Mrs A telephoned RPA on 21 March 2006. RPA's records show they told her they were unable to answer her question about her entitlement statement and asked her to put her query in writing. They received her letter the next day. It said her entitlement statement showed that she was due to receive €20,351.27 (about £14,000 at 2006 exchange rates) but she had received a cheque for only £5,141.85 from RPA. She asked them to explain the reasons for this. She has since said that RPA would not have realised they had paid her incorrectly if she had not telephoned them. She said they did not seem to have a clue.

E9 In April 2006 RPA confirmed with the 'RDEs' (the Rita Delivery Experts) that Mrs A had incorrectly received payments for the 2005 SPS. They noted that they were awaiting guidance on how they would recover overpayments. Later that month, on 25 April 2006, an agent approached by Mrs A (the agent) contacted RPA. He said Mrs A wanted to correct her mistakes and asked RPA to amend her forms to enable them to pay her full SPS entitlement for 2005. On 2 May 2006

he sent RPA a similar letter about the mistake made by Mrs A's partner, Mr Z, in his 2005 SPS claim.

E10 On 19 May 2006 RPA referred the overpayment details in Mrs A's case to their scheme management unit, to find out how to recover the overpayment from her. RPA's papers show that in August 2006 staff in RPA's Exeter office were considering her 2005 claim. We believe this was because of the agent's representations.

E11 On 27 September 2006 RPA incorrectly sent Mrs A a further payment of £96.65 for the 2005 SPS. They have told us that this was the modulation refund<sup>90</sup> required by the SPS regulations. In total RPA had sent Mrs A £5,238.50 in error for the 2005 SPS.

### **RPA's internal debate about the claim – from September to November 2006**

E12 On 28 September 2006 the appeals champion in RPA's Exeter office referred Mrs A's appeal to the SPS scheme management unit in Northallerton. On the same day, the scheme management unit appeals champion referred the appeal to the policy team in Reading, asking for advice. They gave a deadline of 20 October 2006.

E13 The appeal referral from Exeter was in two parts. The first part, written by the team leader, set out the background and explained that there was no information on Mrs A's claim form to suggest she had wanted to activate her entitlements in 2005. It said:

*'Unfortunately, either at HVDC [the high volume data capture stage] or*

<sup>90</sup>A proportion of SPS payments is deducted to fund other agricultural and environmental support. Farmers then receive a partial refund of this modulation deduction.

*during the level one validation on four of the applicant's ten fields, entries were incorrectly entered in to the e-channel which actually gave activated entitlements, so subsequently the applicant received payment based on 13.01ha out of the total of 33.36ha of established entitlements.'*

The appeal referral said that the mistakes on the form could not be considered to be notified error<sup>91</sup> because RPA told Mrs A about the error before she notified them. It recommended that RPA adjusted their records to activate all the entitlements on the grounds that:

*'she made a genuine mistake, she obviously believed she was due a payment, she farmed the land for the whole year and the land was at her disposal for the relevant 10 month period. [Mrs A], like many other applicants that have similar cases, believed that establishing entitlements for payment meant that she was requesting payment.'*

It noted that paying Mrs A would save RPA from the embarrassment of recovering money she should not have received if they had processed the claim correctly.

E14 The same appeal referral continued with comments from the Exeter appeals champion. He said that he was holding a number of cases where customers had made similar mistakes until he had a decision on Mrs A's. He said:

*'It seems harsh for us to allow payment under the obvious error rules to those who completed Q5 with a start date for the 10 month period when the SPS Handbook and Guidance for 2005 clearly states that*

*if this was left blank we will assume their 10 month period starts on 1<sup>st</sup> February. I understand the significance of this [the insertion of a 10-month date] in suggesting there is a contradiction in info provided on the form, it seems a rather arbitrary distinction to make when dealing with people's livelihoods, especially when we gave our customers the impression that we would be as understanding as possible in the first year of such a complex scheme.'*

E15 On 31 October 2006, before the appeal received further attention, the agent wrote to RPA. He said that RPA had paid Mr Z – the case where the agent had made the same representations as he had for Mrs A. He asked RPA to revisit Mrs A's claim.

E16 On 9 November 2006 the Northallerton office followed up the appeal referral they had sent the policy team in Reading. This seems to have prompted action from them. On 14 November 2006, a Reading policy officer said in an email: *'I do not see that there is anything we can offer here without creating a precedent'*. He noted that Mrs A had three opportunities on the claim form to tell RPA that she wanted to activate her entitlements but failed to do so. He said:

*'All of this is unfortunate and suggests that [Mrs A] did not understand what was meant by activate, however it would not lead to anything other than the assumption that we were acting in accordance with her wishes by establishing but not activating.'*

He said the fact that RPA had paid her by mistake devalued their argument, but did not change what was on the claim form. He said

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<sup>91</sup> In commenting on the draft report, RPA told us: *'This is true, but also she could not use notified error to amend her form, only to avoid penalties or deductions. The referral form appears to have used the wrong provision'*.



that the agent's letter referred to the 2005 Handbook's paragraphs on 'obvious error' and 'notified error'. The officer's view was that, even if 'obvious error' was open to question, 'notified error' was not an issue since it was RPA's overpayment that had alerted Mrs A to her mistake. He also noted that, since RPA had established entitlements, there was no long-term damage. He said:

*'Were this an isolated case I think a suitable compromise would be to write-off the overpayment but not activate the remaining fields. I can understand [the appeal champion's] recommendation, but were we to go down this route we would need to revisit any similar cases and the Delivery SMU [scheme management unit] would need to revise its briefing, so I think this is a non-starter.'*

- E17 On 15 November 2006 the Exeter office emailed the Reading policy team about the agent's information that RPA had accepted 'obvious error' in Mr Z's case. (The Agent's letter did not say that RPA had accepted 'obvious error'.) He asked whether that affected RPA's handling of Mrs A's case or whether they should ask Mr Z to repay the money.
- E18 Another policy officer replied to the processing/Exeter appeals champion on 18 November 2006. She said: *'the only "obvious" conclusion from this form is that she [Mrs A] only intended establishing her entitlements but not to activate them in 2005'*. The officer said that she had looked at Mr Z's case and that he had made the same errors as Mrs A. She said she could not understand why his claim had been paid and that RPA should consider recovery. She also raised concerns that the agent had submitted

incorrect forms for Mrs A and Mr Z (for the 2005 SPS year). She suggested Mrs A and Mr Z might be able to pursue the agent, depending on their agreement with him. (It is not clear why the policy officer believed the agent had submitted either or both the claims. The agent's authorisation to act for Mrs A was dated 24 April 2006.)

### The outcome of Mrs A's first representations

- E19 RPA wrote to the agent on 27 November 2006. The letter apologised for the delay in replying to him. It said that Mrs A should not have received any payment for her 2005 claim. It described the omissions in her claim form and said there was nothing on the claim form to suggest that Mrs A wanted to activate her entitlements. It said that although there had been genuine errors (by Mrs A) in completing the form, these errors could not be classified as an 'obvious error' under EC Regulations. It said that a keying error by RPA had resulted in four of Mrs A's entitlements being activated and this was why she had incorrectly received a payment. The letter said RPA would correct their errors and recover the overpayment in due course. It also said they had looked into Mr Z's claim and that he should not have any payment for his 2005 SPS claim either. It said the errors in his case were not classified as 'obvious errors' and it was possible that they would recover the overpayment from Mr Z.
- E20 That same day RPA wrote to Mrs A telling her that she should not have received payment for the 2005 SPS claim. They reiterated what they had said in their letter to her agent, but made no reference to Mr Z. They told Mrs A that if she was unhappy with the outcome, she could appeal and they sent her an appeal form.

## Mrs A's appeal about her claim – Stage 1

E21 On 8 January 2007 the agent wrote to RPA about Mrs A's Stage 1 appeal. The agent set out Mrs A's grounds for appeal. He said that:

- Mrs A's failure to fill in the SPS forms correctly was an obvious human error and in no way deliberate or fraudulent;
- the Handbook said that RPA had the discretion to accept that honest mistakes/errors were made and could permit payment of entitlements under SPS;
- RPA had accepted that a genuine mistake had been made and on that basis it was self-evident that there had been an 'obvious error'; and
- Mrs A's errors in failing to complete the form correctly were manifestly 'obvious'.

E22 The agent also referred again to Mr Z's case, explaining that he was Mrs A's partner. He further said that Mrs A's cousin, Mr W, had also failed to complete column J of the field data sheet properly. In his case RPA had telephoned his agent to ask whether he wished RPA to correct the 'obvious errors'. Mrs A's agent asked RPA to reconsider their stance and allow Mrs A's appeal.

E23 The next action we have seen was in May 2007. The agent spoke to RPA and sent them a copy of the Stage 1 appeal form, which he said seemed to have gone missing. In September 2007, after he wrote to them, RPA telephoned him with an update.

## RPA ask for their money back

E24 In the meantime, on 3 August 2007 RPA had amended their records and on 12 August 2007

they had sent Mrs A an invoice for the £5,238.50 they had paid her in error. Mrs A has told us she received no further contact from RPA about the overpayment – they just deducted it from a later year's SPS payment. She has said she cannot see that RPA have the right to pay someone and then take it back when it suits them.

E25 On 9 October 2007 RPA's Stage 1 appeal upheld the original decision not to amend Mrs A's 2005 claim form to allow her to activate her entitlements. They sent the decision to the agent, with their apologies for the delay in dealing with it. They said if Mrs A was unhappy with this decision, she could proceed to the second stage of the appeal procedure and enclosed a Stage 2 appeal form and the appeal leaflet for further information. These were the main points in the decision:

- The first time Mrs A contacted RPA to query her entitlements was 4 April 2006. (Mrs A had telephoned them and written to them on 21 March 2006 about the difference between her entitlement statement and her payment.) This meant all contact had been after the 31 May 2005 SPS deadline for notifying RPA about amendments.
- It was not possible to allow Mrs A to amend her 2005 claim form under EC Regulations about 'obvious error' because the way she had completed her form was consistent with an applicant who wanted to establish entitlement to claim under the SPS but did not want to activate entitlements for the 2005 SPS year.
- The 2005 Handbook said the Regulations allowed RPA to make corrections on a claim at any time provided an applicant

notified RPA in writing of this before RPA notified them of the error, but they said that ‘notified error’ did not extend to amending a claim form after the deadline of 31 May 2005 to add data that was not initially included in the claim.

- RPA were unable to consider the agent’s examples of similar cases that had been paid when considering her claim. They noted that if it came to their attention that other applicants had been paid incorrectly, they would need to recover any overpayments from them.

E26 In November 2007 the agent telephoned RPA about the Stage 1 appeal. Among other things noted in RPA’s papers, he said: *‘RPA had been encouraging agents just to get the forms in and RPA would sort out any mistakes later.’* He felt that by rejecting Mrs A’s appeal, RPA had contradicted what they had said in 2005 and that this was unacceptable in his view. In commenting on the draft report, Defra and RPA said that they believe the agent was referring to RPA’s stance on mapping issues, not on claims generally. But that is not what the evidence we have seen suggests.

E27 In December 2007 the agent sent RPA Mrs A’s grounds for her Stage 2 appeal. Among other things, he said:

*‘[Mrs A] admits to having been confused as between establishing and activating entitlements. She thought that by establishing entitlements that that automatically led to the activation of entitlements i.e. entitled to receive the money owed.’*

He went on to say: *‘The SP5 forms are substantially different from the IACS forms and*

*their layout and the applicant was confused that the forms had changed and this was not made clear by the RPA.’* He made two further points: it was not necessary to fill in the 10-month start date because the default start date was 1 February 2005; and Mrs A would not have completed and returned the claim form if she had not wished to claim any payments.

### **Mrs A’s Stage 2 appeal ends**

E28 On 27 January 2008 RPA’s appeal panel recommended that the Minister should reject Mrs A’s Stage 2 appeal. They said they had sympathy for Mrs A and that there had been a genuine error in completing the SPS claim form. However, they said that there had been no ‘obvious error’ under the regulations. On 4 February 2008 the appeals panel secretary submitted the panel’s recommendation to the Minister and on 5 February 2008 the Minister agreed the recommendation.

E29 On 7 February 2008 RPA’s appeals panel secretary sent the agent the Stage 2 appeal decision. He said that Mrs A could challenge the Minister’s decision by judicial review or she could complain to this Office, through her MP, if she thought there had been maladministration.

E30 In March 2008 Mrs A wrote to the Minister and the Member. Among other things, her letter to the Minister said:

*‘I did not tick the activation boxes as I have been claiming since 1995 and wrongly assumed that the claim was therefore ongoing and did not require activation [...] In previous years I took my forms to the RPA offices in Exeter where they were checked but this service was stopped in 2005.’*

She asked the Minister to help. The Member also wrote to the Minister about her case. Later in March 2008 the Minister replied. He said he had sympathy for Mrs A's situation but the appeal procedure was complete. He said Mrs A could challenge his decision through the courts or if she was unhappy with RPA's handling of her case she could ask the Member to refer her complaint to this Office.

- E31 RPA sent Mrs A an invoice on 20 August 2008 requesting payment of £5,238.50, the total amount they had paid her in error.
- E32 The Member referred Mrs A's complaint to this Office on 26 September 2009.

### **Mrs A's description of the effect on her of losing the 2005 payment**

- E33 We have asked Mrs A about how losing her 2005 SPS payment affected her. She has said her farm had a small acreage and turnover and she did not make a profit. Losing the subsidy was a big blow. But as long as they could live, they were happy. She responded to the loss by cutting back the number of cattle she kept and being very careful about what she spent. Before losing that money, she used to rent 60 acres from her partner, Mr Z, for grass keep (which is buying the grass off the field for grazing or for silage on top of what she had of her own). For four years she could not pay him. She had no way of paying him. She did not like being unable to pay and it caused a little bit of friction but, very fortunately, nothing that was going to become a problem. She has said that RPA have not sought to recover the money they paid Mr Z in error.
- E34 Mrs A has also told us that her impression of that time was that RPA never returned telephone calls. She never spoke to the same

person and they did not seem to understand that, as a farmer, she was out there at all hours and in all weather. She found the experience of losing her 2005 payment, and what followed, exceedingly stressful. She said she *'just worried and worried and worried'*.

### **Some comments from Mrs A on a draft of this report**

- E35 We shared a draft of this report with Mrs A. She told us that she had lost confidence in filling in any forms from RPA and now always used an agent. She also said: *'The hassle and stress have resulted in my being prescribed both anxiety tablets and anti-depressants, although I am beginning to cope far better again, but for two years my life stood still'*.

## Mr B

### About Mr B

- E36 Mr B's 2005 SPS claim covered 97 hectares (240 acres). He is an arable farmer in the East of England, with no livestock. Mr J has been Mr B's agent since about 1995.
- E37 Mr B is a tenant of the county council, which means he is not permitted to sublet his land. However, there is a long-standing practice in that part of the country for specialist pea contractors to grow peas for freezing on farmers' land. If the peas are unsuitable for freezing, the farmer keeps the crop.
- E38 The start of subsidies for fruit, vegetable and potato crops (FVPs) was the complicating factor for farmers in Mr B's position. Issues about dual claims for subsidy on these crops had not arisen before 2005. That was partly because no subsidy had been payable on peas and partly because 2005 was the first year of linking subsidy to land holding instead of production. Under the IACS scheme claims the land was always under Mr B's name, as it met the criteria for being under his control at the key date. (The FVP scheme no longer exists.)
- E39 An NFU Information and Analysis paper issued on 10 July 2006 said: *'The introduction of SPS has not been a happy experience for FVP growers and those farmers who provide them with land under short-term arrangements.'* The paper went on to explain that farmers and specialist growers often had informal arrangements about land. In 2005 specialist growers who had not received direct subsidy in the past ended up claiming SPS. If the specialist growers had not claimed, there had been a risk that the industry would lose financially because they had failed to establish

entitlements. The paper noted that farmer claimants needed to ensure they had enough management control to fulfil the rule of having the land at their disposal for 10 months. It described the FVP regime as almost unworkable.

### The 2005 SPS claim

- E40 On 12 May 2005 Mr J wrote to RPA. The letter was headed '[Mr B] – SBI [...]' and Mr J handed it in with the form. But he delivered it as a general query, not a covering letter. The letter said he had recently delivered an SPS claim.

*'I was surprised and disappointed to find that this year, staff have been instructed to give no help or advice on any query even though this is the first year of the new regime and with ever more complex forms – other than to check for signature and tippex!'*

his letter said. In the next paragraph it said:

*'I am concerned that three applications I handed in may have unintentional errors as I am unsure of the need to activate entitlements for fields let for an annual crop, but which may be retained by the grower if not fit for the purpose for which it was grown. The FVP [fruit, vegetable and potato entitlement] being claimed by the hirer [sic]. I had taken some thirty forms to the office at the same time and they were split up between three clerks for stamping at three separate desks and I did not ask for my query to be appended. I raised my queries and was told that anomalies would result in the return of the form for correction as in previous years and trust this will be so.'*

RPA have said that they have no record of receiving Mr J's letter. He has said that, if they had replied, he would have updated Mr B about the correct situation.

E41 On 13 May 2005 Mr B's claim, which was signed by Mr B, passed RPA's Level 0 validation checklist. The checklist noted the agent's authorisation.

E42 Mr B and Mr J have said that, after Mr J had submitted Mr B's claim, the pea contractor spoke to Mr B. He and the pea contractor agreed that for 2005 the pea contractor would claim the fruit, vegetables and potato subsidy for his pea crops on Mr B's land. Neither of them contacted RPA or Mr J about this changed arrangement. Mr J later told RPA<sup>92</sup> that Mr B had believed it did not matter, since he had not claimed fruit, vegetables and potatoes authorisations for those fields.

### RPA identify the dual claim – November 2005

E43 On 8 November 2005 an RPA caseworker noted that the pea contractor and Mr B had claimed for the same land. RPA wrote to both of them about the dual claim on three fields. Mr B also recalls a telephone call about the dual claim, but we have seen no record of it. We have not seen any record of RPA contacting Mr J, as Mr B's authorised agent.

E44 On 24 November 2005 Mr J replied to RPA's letter of 8 November 2005 to Mr B. He said:

*'The three fields to which you refer were completed as being cropped in 2005 when the application for single payment was completed on the 26th April 2005. This was my client's intention on that date. Sometime later he was approached by [the*

*pea contractor] who asked if these fields could be cropped with peas. My client agreed and as he was not claiming for any fvp [fruit, vegetables and potato] on these fields did not realise that his form needed any amendment. On previous occasions he has made arrangement[s] with other vegetable growers that he would remain responsible for the crop until harvest when the produce would become the property of the merchant. I believe that this is not so in this case and these fields should rightly be claimed for by [the pea contractor] as they need the entitlement to the horticultural authorisation. [...].'*

### RPA revisit the dual claim – January to June 2006

E45 On 16 January 2006 another RPA caseworker noted a dual claim on another land parcel, and wrote to both claimants. We have not seen a copy of the letter of 16 January 2006, but we believe it was about a fourth land parcel [...]. Mr J replied, referring RPA to a letter he had sent the Rural Land Register in April 2005. Later in January 2006 RPA wrote to Mr B again about the same land parcel. On the same day, 26 January 2006, they noted that they had removed the fields as requested.

E46 In commenting on the draft report, Defra and RPA said:

*'It seems that all parcels referred to in the appeal [...] have been removed from the claim without penalty. However the payment this would produce is on hold. Essentially the penalties were applied, then the fields removed from the claim incorrectly by the case worker, but not added back on and penalised after the Stage 1 result. Additionally we have identified*

<sup>92</sup>In his letter to them of 24 November 2005.

*an additional field that has been removed without penalty that has not been referred to in the appeal or the [draft] report and it seems we did not notify the customer of this either. Manual calculations suggest this would not affect the total level of penalty to be applied, that is the entirety of the 2005 claim, because even with this additional field the area found to be ineligible exceeds 30 per cent of the determined area, but not 50 per cent, which would trigger three year penalties. There is no effect on the customer.'*

E47 In February, March, April, May and June 2006 RPA caseworkers dealt with 'discrepancies' in Mr B's claim. In commenting on the draft report, RPA confirmed that these were validation tasks. We have seen no indication that RPA copied any of their letters about these tasks to Mr J. On 5 June 2006 RPA noted that they had 'found in supporting documents' for Mr B's claim a letter which confirmed that Mr B owned 'the field', but only the pea contractor would be claiming, and had updated their system to reflect that information. We have seen no information to explain which letter or which field they meant. Also in June 2006 an RPA processor corrected a field reference for Mr B's claim – [...] [...] had been input incorrectly. He corrected [...] to [...].

### **Mr B asks why he has received just 1p**

E48 In July 2006 Mr B (by telephone) and Mr J (by letter) contacted RPA to ask why he was receiving only 1p, with the other £6,000 taken off in penalties. This followed RPA's letter of 26 June 2006 to Mr B, which we have not seen. Mr J said his queries on behalf of Mr B had indicated that a payment was imminent, but RPA's letter showed penalties and deductions equal to the payment

outstanding. Mr B telephoned RPA again on 24 July 2006. RPA's note of the call said: 'I checked the notes, but the only thing I could see which might have a bearing is a reference to dual claims. On enquiry screen it says "SPS Penalty other"'. They mentioned the appeal route. At this stage RPA had not scanned Mr J's letter into their system. He wrote again on 12 August 2006. RPA have told us they have no evidence of receiving that letter. Mr B telephoned again on 1, 8, 16 and 29 August. He said his bank manager 'could not wait much longer'. On 1, 21 and 22 September 2006 RPA noted that Mr B called again. On 21 September 2006 RPA noted: 'His claim on enquiry page says amended, but he is not on any spreadsheets'. Mr J also wrote again to RPA on 18 September 2006.

E49 On 22 September 2006 RPA wrote to Mr B. They said they had reviewed his claim and decided they needed to adjust their records. They said they would contact him again when they had adjusted it, but asked him not to contact them for further information as they were: 'striving to make payments on all claims, including yours, as quickly as possible'. In November 2006 and January 2007 Mr J and RPA were in touch again. On 2 March 2007 Mr B telephoned RPA. They told him his claim was still being validated, but 'hopefully he would receive his payment shortly'.

### **RPA explain, remove the penalty, then put it back – April to July 2007**

E50 On 25 April 2007 (after two attempted telephone calls on 21 March 2007) RPA spoke to Mr J. Their note of the telephone conversation is that they told him the penalty seemed to have been applied because four parcels of land had been claimed in 2005 by Mr B and by the pea contractor; that Mr B's

written request for withdrawal of the first three parcels was made in a letter dated 24 November 2005, replying to RPA's letter of 8 November 2005; that his request for withdrawal of the fourth parcel was made in a letter dated 5 November 2006 in response to a telephone call from RPA; and that it seemed penalties had been applied because the requests had been made after RPA had drawn Mr B's attention to a problem or anomaly.

E51 On 8 May 2007 Mr J wrote to RPA. He said:

*'It was in 2005, when Mr B was growing peas with [the pea contractor] that he was approached and it was suggested that, provided he had sufficient fvps for his own needs, it would help [the pea contractor] if the peas could be treated as his. Mr B agreed and some fields with peas were excluded from his application. Unfortunately, the list given to me was not identical to that discussed and this field – [...] was not included. The reason for this was partly due to this field number being originally mistyped by yourselves as [...] and the field was then amalgamated and renumbered as [...].'*

He said he had explained this in his letter of 5 November 2006, but had received no reply. He also said that in two similar instances, RPA had corrected claims without penalty.

E52 On 20 June 2007 another RPA officer looked into the claim. He decided to remove the penalties because: *'... this seems to be an honest mistake ...'* On 2, 5, 18 and 24 July 2007 Mr B telephoned RPA. He found out that the penalty had been reversed, but the payment seemed to be *'stuck in finance'*. RPA told Mr B that he would be paid.

E53 On 26 July 2007 RPA reimposed the penalty and the next day explained matters to Mr B and Mr J. Mr J told RPA he was dissatisfied with their overall handling of the case and the penalty decision in particular. On 1 August 2007 RPA wrote to Mr J. The letter said the penalties were still in place. Among other things, it said there should have been an RLE1 form<sup>93</sup> to enable the pea contractor to claim on Mr B's entitlements. The letter referred Mr J to section D9 of the 2005 SPS Handbook, which was about transferring and letting land. It said Mr J needed to appeal if he wished to dispute the decision.

### The Stage 1 appeal – August 2007

E54 On 16 August 2007 Mr J submitted Mr B's Stage 1 appeal. He enclosed a copy of his letter of 12 May 2005 to RPA. The grounds of appeal were:

- 2005 was the first year for SPS claims and, despite attending two seminars, questions inevitably arose.
- The RPA landline was almost impossible to access due to the volume of calls in May 2005.
- The usual advisers at the drop-in centre at Newmarket could not help.
- Mr J realised three possible problems and wrote to RPA for advice but received no response on any of them.
- The alleged dual claim was inadvertent and not an intention to defraud.
- The fields in question belonged to Mr B and were activated in error – to ensure that they were registered and not to receive

<sup>93</sup> The RLE1 form is used to tell RPA about entitlement or land transfers. It replaced the IACS 22 form.



fruit, vegetables and potatoes subsidy or payment.

- It was their intention to register the fields for future claims and not to claim in 2005.
- It was agreed between the NFU and the RPA that genuine errors made in 2005 would not be penalised.
- It is only possible to notify RPA about an error when it is known that an error has occurred. The agent believed that the claim had been completed reasonably and competently and in good faith.
- Mr J had written to RPA in general terms asking for their advice and for the claim form to be returned for correction if it was inadvertently in error. He said that that should count as notification even though RPA did not reply.
- Mr J had had a similar case to Mr B's, involving a dual claim of a river bank between a grazing tenant and English Nature<sup>94</sup>. An exchange of letters had resolved it without penalty.

E55 On 5 February 2008 RPA sent Mr J the Stage 1 appeal decision. They had decided to remove the penalties applied to land parcel [...]. They said that was because Mr J had told RPA about that error in November 2006, before RPA raised it. They had upheld the decision to apply penalties on the other land parcels. They also said that the letter of 12 May 2005 omitted to specify the possible problems or on which fields they may occur. It would have been too little to prevent the dual claims even if RPA had received it.

## The Stage 2 appeal – March 2008

E56 On 20 March 2008 Mr J submitted Mr B's Stage 2 appeal. On 19 May 2008 the RPA appeal panel upheld RPA's decision to apply penalties. They commented that the lack of adequate communication from RPA put unnecessary stress on Mr B and that financial penalties affected smaller applicants disproportionately. They said that should be reviewed at a higher level. On 28 May 2008 the submission to the Minister recommended upholding the appeal panel's recommendation. The submission repeated the panel's comments about communication and the effect of the financial penalties on smaller applicants, but made no recommendation for action in the light of that comment.

E57 On 2 June 2008 RPA received confirmation that the Minister had agreed with the panel's recommendation to reject the appeal. Separately, the Minister's office asked for more information about the panel's statement about reviewing the effect of financial penalties on smaller applicants. On 5 June 2008 RPA sent Mr J the outcome of the appeal. Later in June 2008, the panel secretary emailed the Minister's office a note on the effect of penalties, prepared by a member of RPA's policy team. The panel secretary said: *'I don't think there is any more we can do but if the Minister directs it I'll go back to Defra policy'*. The note from the policy team said:

*'It would require an amendment to the EC Regulation which specifies the level of penalties to be applied. Although we can channel this request through Defra, it is not very likely that it would be achieved as it would require the Commission to agree in principle and would also require*

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<sup>94</sup>Now part of Natural England.

*the agreement of all other member states. Although I understand the feeling that small claimants are potentially penalised more, i.e. in that if the small producer makes only 1 mistake on his application the fallout is likely to be higher, but the same principles are applied to all claimants. It is the extent of the mistake that determines the penalties rather than how many errors were made.'*

RPA have told us that there was no further contact on this issue from the Minister's office.

### The attempt to go to court

E58 On 4 August 2008 Mr J wrote to RPA. He said Mr B had decided to challenge the appeal decision by judicial review. He referred to the panel's conclusions that first, there had been a lack of adequate communication from RPA, which had put unnecessary stress on Mr B; and secondly that financial penalties affected smaller applicants disproportionately harshly and should be reviewed at a higher level. He also said that in 2005 RPA had breached the standards set in their *Guide to the standard of service that we provide to all our customers*. RPA acknowledged the letter and said the contents had been noted.

E59 On 24 September 2008 Mr J made a judicial review application. His grounds for the review were that RPA had been neglectful in dealing with and explaining the issues. He said that, if RPA had met their standard of service, Mr B's claim would have been resolved without cost to him.

E60 On 21 October 2008 RPA's legal division wrote to Mr J about the judicial review application. They said that they were unable to accept that RPA had any liability to Mr B over his SPS claim, but they apologised for failing

to give a complete response to his letter of 4 August 2008. They offered to reimburse his reasonable costs if he withdrew his claim, in recognition that a full reply to his letter of 4 August might have led him to drop his claim. They also said that RPA's policy directorate had reviewed the issue of penalties and smaller claimants immediately after RPA had notified Mr J of the appeal decision. They said that the penalties operated on a sliding scale related to the area of land affected by the overdeclaration, so a large applicant would be affected to the same extent as a smaller applicant. They further said that, even if there were any disproportionality, it did not breach the general principles of European Community law.

E61 On 20 November 2008 Mr J wrote to RPA. He said that RPA's solicitor had suggested he should complain to the Ombudsman about maladministration. He said he was making a final submission so that RPA could reconsider the case. He gave five examples of mistakes corrected without penalty.

E62 On 3 December 2008 the High Court refused permission for the application for judicial review. The judgment said:

*'... the documents do not demonstrate any error of law or irrationality on the part of either the RPA, or its appeal panel, or the Minister, or Defra. The Panel's sympathetic comment about lack of adequate communication does not signal any ground or basis for judicial review, although it may (I stress, may) indicate some alternative extra judicial remedy for maladministration. The Panel's acknowledgment that financial penalties affect smaller applicants disproportionately does not indicate any reviewable error of law. At most it indicates*

*the view of the Panel that the law, when correctly applied, may bear more harshly on smaller applicants.'*

- E63 Later in December 2008 an RPA lawyer told the RPA official dealing with Mr J's letter of 20 November 2008 that Mr J seemed to be asking for a response about maladministration rather than the appeal decision. She said that dealing with the points Mr J had made would show the Ombudsman that RPA had done all they could before Mr J took the complaint further. The official, who had been the panel secretary for the appeal, took the view that no further explanation was needed because Mr J was raising the same points as he had made at appeal. He wrote to Mr J in January 2009. The Member referred the complaint to the Ombudsman in February 2009.

### **Mr B's description of the effect on him of losing the 2005 payment**

- E64 Mr B has told us that the problem for him was being accused unfairly of fraud – that was how the penalty issue had felt to him. He found it difficult that each time he called RPA, he was passed around to three or four people, none of whom knew what was going on. He has also said that there were times when RPA failed to return telephone calls. He said that he was lucky to have been in credit at the bank and that the bank had been willing to lend to him. His penalty affected only his 2005 SPS payment.

### **Some comments from Mr B on a draft of this report**

- E65 We shared a draft of this report with Mr B and his representative. His representative said that he was disappointed with the conclusions we had reached, but he accepted our reasoning. However, he said that he believed that the circumstances of Mr B's complaint would justify a larger payment to him than the £1,000 I had recommended, closer to the £6,000 loss he had suffered.

## Mr C

### About Mr C

E66 Mr C is a tenant farmer in the South West of England with about 40 hectares (about 98 acres) of land. He is a beef farmer, although he had a dairy herd until 2004. Mr C is completely deaf in one ear and partially deaf in the other. He has said that, generally, he prefers written communication and, after he has spoken to RPA, aims to confirm conversations by letter. Mr C told us that he had told RPA that he was deaf *'time and time again'*. Mr C also told us that it would have been easier for him if he had had to deal with one person *'instead of 25'*. Mr C is 76. Two of my investigators have met Mr C and his representative. In the meeting Mr C had a full grasp of the facts of his case, but it was clear that he had difficulty hearing what the investigators said. His handwriting on the official forms and letters that we have seen can look unsteady. He has said that he attended one of RPA's meetings for farmers, but was unable to hear the information given.

E67 Before SPS claims started in 2005, Mr C used an agent to make his claims for subsidy and in 2005 a Forest Friendly Farming<sup>95</sup> adviser helped him with his SPS claim. It was successful. However, Mr C did have some queries about RPA's handling of his 2005 claim and he was still trying to resolve those when he claimed SPS in 2006. For the sake of making the facts of his case easier to understand, I have put the story of those queries and the story of Mr C's 2006 SPS claim in separate sections. First, I have dealt with Mr C's experience with his 2006 SPS claim.

E68 For the avoidance of doubt, I should say here that the papers we have seen show that, from time to time, RPA officers did consider the welfare and stress issues raised by Mr C and people writing on his behalf. We have seen no evidence that RPA attempted to have any face-to-face meetings with Mr C and his representatives.

### The 2006 SPS claim

E69 Mr C's farming adviser was away when he made the 2006 claim and Mr C looked after the claim on his own. He would have received about £9,128<sup>96</sup> in total from SPS in 2006 if he had activated all his entitlements as he had intended.

E70 On 4 May 2006 RPA received Mr C's 2006 SPS claim form. Mr C had completed column C10 to activate his entitlements for only one field parcel. He had added this line by hand. He had left the lines of pre-populated field data untouched. His covering letter said: *'On filling out this application you completely missed out field number [...] which is recorded on your Rural Land Register Map'*. In his comments on a draft of this report, Mr C said that the small print on the form said there was no need to alter it unless land was missed out. (The 2006 form also asked claimants to correct any mistakes in the preprinted entries.)

E71 On 5 May 2006 Mr C's 2006 SPS claim form passed RPA's Level 0 validation checks. The checklist asked if at least one line in the field data sheet had entries at parts C2, C4 and C8 or D1 and D2. One line was completed – enough for Mr C's form to pass the basic

<sup>95</sup>Forest Friendly Farming is a group set up to support farming, commoning and woodland management in the New Forest.

<sup>96</sup>His 2006 SPS entitlement statement gave the value of his entitlements as €13,468.92. The euro conversion rate for SPS 2006 was €1 = £0.67770.

checks of RPA's initial validation process for part C of the claim form.

- E72 The 2006 SPS claim form, in part E, also asked claimants to use the information from their field data sheets (part C) to tell them which entitlements they were 'activating for payment' in 2006. There was no preprinted entitlement information in part E of Mr C's claim form and he made no entries, either of individual entitlements or to complete the 'activate all' box on the form. We asked RPA about how they handled claims where part E was blank. They told us that Mr C's form failed the checks for part E of the claim and their guidance at the time was to send an 'SPV1' letter asking for the missing information. They told us they could find no records of writing to Mr C and that it seemed no action was taken on the blank part E. In principle, the lack of an entry in part E did not disadvantage Mr C. That was because RPA decided to base 2006 scheme payments on the land area activated in part C of the application form even if that was not supported by the entries in part E. RPA also said that, even if Mr C had completed the blank part E, after receiving an SPV1 letter, they would only have paid him for the entitlements he had activated in part C.
- E73 On 14 September 2006 RPA telephoned Mr C. Their notes show that an RPA error had inserted a forestry land use code on his claim on their system. They looked into this error and found that Mr C had made no entry in column C8 of his claim form so they asked him for the correct code. The note of the call said that Mr C confirmed that the land use code for 2006 should be '*as 2003 land use code*'. RPA added 2006 land use codes to all the lines of data in the claim, including the lines of pre-populated data that Mr C had not activated. Mr C has told us that, in that call with RPA, he had told them that everything on his 2006 form should be the same as his 2005 form. On the same day, 14 September 2006, RPA wrote to Mr C. They said he had not completed the 2006 land use information and he had told them the information should be the same as in 2003. They listed the land use codes they had added. The letter made no reference to the missing information on activation of the entitlements, although RPA had noted on their system the eight lines that had '*no other info entered*'.
- E74 On 18 September 2006 Mr C wrote to RPA. His letter enlarged on and clarified the information about land use and mentioned a mapping amendment. On 22 December 2006 RPA sent Mr C an SPS 2006 entitlement statement. It said that he had 35.48 entitlements with a total value of €13,468.92 and that these figures might be revised.
- E75 In February 2007 RPA wrote to Mr C about the SPS 2006 partial payments to be made that month. They said that they would send him between 50 per cent and 60 per cent of his 2006 SPS claim and pay the balance when they had completed the claim validation. On 19 February 2007 they sent him a remittance advice for £1,176.73 of SPS and an ex gratia payment of £50 (resulting from a mix-up in his 2005 payment details, which I explain in the second section of this chronology), to be paid within 10 working days. Mr C queried this payment on 20 and 22 February 2007.
- E76 On 5 March 2007 Mr C told RPA that he had had to borrow money from the bank and asked why his 2006 SPS partial payment was lower than he had expected. RPA told him that only one field had been activated. On 12 March 2007 he telephoned them again and they said they were looking into his claim

- urgently. On 16 March 2007 they asked their scheme management unit whether his failure to activate his entitlements at column C10 could be considered as ‘obvious error’.
- E77 On 26 March 2007 Mr C telephoned RPA again. On 30 March 2007 the scheme management unit decided that ‘obvious error’ was not appropriate in Mr C’s case because there was no inconsistency within the claim form which would suggest any intention to activate entitlements.
- E78 On 2 April 2007 RPA received a request from the Tenant Farmers Association, one of their significant farming stakeholder groups. They asked RPA to look at Mr C’s case. They explained that Mr C was profoundly deaf and set out the mistake Mr C had made in his 2006 SPS claim. They said that, given Mr C’s age and disability, they hoped RPA would show some flexibility. On 3 April 2007 RPA tried to contact Mr C by telephone to update him and on 4 April 2007 the RPA chief executive wrote to the Member, who had also intervened. The chief executive apologised. He said that Mr C’s 2005 claim was going through what he called a redefinition process (see glossary on entitlement corrections) that would enable additional payments. But on the 2006 SPS claim he said that RPA had no scope to apply the ‘obvious error’ provisions.
- E79 On 11 April 2007 Mr C wrote to RPA saying that he wished to activate his entitlements for the 2006 SPS claim. He said that it appeared that column C10 of his claim was not completed properly. Mr C said that, unfortunately, due to a number of other outstanding issues with the SPS, including missing entitlement statements and incorrect historic figures, he could not remember who he had spoken to and why the column C10 was not activated. Mr C said that he hoped the situation could now be quickly rectified and the correct payment could be issued. On 23 April 2007 Mr C’s Forest Friendly Farming adviser called RPA saying that he understood that Mr C had not activated his entitlements but he was reluctant to appeal as that would cost Mr C a further £100. The adviser said that Mr C was facing other issues: vandals had burned down his barn; his car had been stolen; and the people who rented land from him had not paid and that matter was going to court. RPA said that they would look at Mr C’s claim again the following week.
- E80 On 4 May 2007 RPA updated Mr C. On 14 May 2007, after he telephoned them, they gave him a further update, noting that it was difficult to communicate with him because of his hearing aid. Later in May 2007 an RPA officer, who had reviewed Mr C’s case, recommended that RPA should accept his positive response for information on completing column C8 as his indication to activate his claim for payment. The papers show that, in reaching this recommendation, RPA compared Mr C’s case with a similar one, where they had accepted that they should have activated the claimant’s entitlements. The scheme management unit said the two cases were different and rejected the recommendation. Separately, RPA noted that Mr C had not activated his relevant common rights on his 2006 claim but that he had written to RPA later about activating them. RPA noted that they should treat that as ‘obvious error’. However, on 31 May 2007 RPA wrote to Mr C saying that they upheld their original decision to refuse full payment for 2006. On 18 June 2007 RPA sent Mr C a payment statement. It said he was due £632.94 in SPS.

### Mr C's Stage 1 appeal about his 2006 SPS claim

E81 On 25 June 2007 RPA received Mr C's Stage 1 appeal. He said that the 2006 claim form had had a dark pre-populated 'X' in the box for activation and it was his understanding that he did not have to write over it again, as it was already marked. Mr C noted that, in the 2007 SPS claim forms, this principle had been continued for all the field data sheets, so the default position was activation. Mr C went on to say that he had told RPA that his land holding had not changed from the previous year and he had asked the officer to amend the 2006 form to the 2005 figures. Mr C said that it did not appear that those amendments had been made. He said that he was experiencing a few problems with RPA at the time he had completed his 2006 SPS claim form and that having to deal with those unresolved issues muddled his focus on being able to deal with what was meant to be a simplified system. Mr C added that he was sure that a number of those issues had come about because he was hard of hearing and staff could not understand his handwriting. He also said that RPA had refused to give him a single point of contact, which had not helped matters, and he described some separate problems he was experiencing. On 26 June 2007 RPA paid him a top-up of £56.21 for his 2005 SPS claim because they had decided to increase the land area covered by his claim. Also in June 2007, Mr C's family doctor provided a letter saying that Mr C had been suffering from gastritis since April 2006 and his symptoms seemed closely related to stress.

E82 On 30 October 2007 RPA sent Mr C their decision to reject his Stage 1 appeal. In November and December 2007 he was in contact with RPA about their view on his common land rights. In December 2007 Farm

Crisis Network intervened in his case. They said they were worried about the effect on Mr C of going through the Stage 2 appeal and they asked RPA to reconsider matters.

### Mr C's Stage 2 appeal about his 2006 SPS claim

E83 In January 2008 RPA extended the deadline for Mr C's further appeal from 31 December 2007 to the end of January 2008. They also decided to make Mr C an early payment of his 2007 SPS claim because of concerns that he was suffering financial hardship. On 22 January 2008 Mr C, with the help of Farm Crisis Network, sent RPA his Stage 2 appeal. The RPA panel hearing was on 5 March 2008. The Member intervened again at this stage to support Mr C's case, and specifically mentioned the effect of his deafness on his dealings with RPA. On 31 March 2008 RPA sent Mr C the Minister's decision to reject his appeal.

E84 On 1 May 2008 RPA wrote to Mr C in response to his letter of 8 April 2008. They said that they did not consider that RPA had discriminated against him as a disabled person through their handling of his appeal. They said that Stage 1 of the appeal was a paper-based procedure; and at Stage 2 Mr C had opted for an oral hearing. They noted that he was accompanied to that appeal by someone from the Farm Crisis Network who, they understood, presented his case to the panel.

E85 On 10 June 2008 RPA asked Mr C to repay £225.76, which they said they had overpaid him for 2006 SPS claim. They wrote to him again about this on 19 August 2008. On the same day the Member referred the complaint to the Ombudsman. RPA looked into the overpayment at Mr C's request and on 2 September 2008 they told Mr C that the

overpayment was correct and that he would have to repay it.

### Mr C's other dealings with RPA from 2005 onwards

E86 Mr C had three long-running queries with RPA before he realised there was a problem with his 2006 SPS claim. The first query flowed from a mix-up on his bank details in November 2005 to May 2006. The second query was about the area of land that RPA had included in his SPS claim, particularly their treatment of his rights on common land. The third query was about the make-up of the historic element of his entitlements (see glossary on 'reference period'). I have set out the main points of his dealings with RPA on these three issues in chronological order. His contact with them about his 2006 SPS claim, set out in a separate section, was in the context of these other queries.

E87 On 3 November 2005 Mr C's new bank sent RPA his new account details. Their letter included a signed instruction from Mr C. On 14 November 2005 RPA wrote to Mr C. They thanked him for the change of details, but said: *'We can only make the changes with the signatures of all authorised persons. We enclose your original documents. Would you please provide full name(s) and signature(s) on these...'* to authorise the changes to trading name, address, bank details, other. It is unclear from the papers we have seen why RPA needed these details.

E88 On 6 March 2006, RPA made an Entry Level Stewardship scheme<sup>97</sup> payment of £575.50 to Mr C's old bank account. Mr C telephoned

them. On 10 March 2006 Mr C wrote to them saying that they had paid it into a closed account. We have seen a reply from Mr C to RPA's request of 14 November 2005, written on the letter they had sent him. It is date-stamped by RPA as received on 27 March 2006.

E89 On 6 May 2006 Mr C wrote to RPA about the area of land they were using for his SPS claim.

E90 On 10 May 2006 RPA sent Mr C's old bank £5,481.51 of his 2005 SPS claim. On 17 May 2006 he told RPA again, by letter, that he had changed banks. He said he had told them so over six months earlier, but they had paid over £6,000 (in total) into his closed account. On 23 May 2006 he telephoned RPA about the incorrect payment. The next day RPA noted that they had received Mr C's instruction to amend his details.

E91 On 26 May 2006 Mr C wrote again to RPA, replying to their letter of 17 May, about the area of land they were using for his SPS claim.

E92 On 6 June 2006 RPA told Mr C that they would reissue his payment once his old bank had returned it. It is not clear which payment they meant, or whether they understood that two payments had gone to the wrong account. On 9 June 2006 Mr C wrote again to RPA about their handling of his bank details. He also complained that his maps had been disregarded when they calculated his payment.

E93 On 30 June 2006 RPA, contacted by Mr C, told him that they would look into matters, which they did. On 4, 13, 17 and 24 July 2006 Mr C, or someone acting for him, telephoned RPA. On

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<sup>97</sup>Entry Level Stewardship is one of the Environmental Stewardship subsidy schemes. The Rural Development Service, now part of Natural England, administered these, using mapping data provided by RPA's Rural Land Register. RPA apply controls as necessary, including inspections, and make the payments for these schemes.



- 26 July 2006 RPA noted that his old bank had returned the SPS payment. RPA paid it to the correct account on 28 July. On 25 July 2006 the Member had complained to the chief executive of RPA about the handling of the bank details. RPA's customer relations unit looked into what had happened.
- E94 On 3 August 2006 Mr C telephoned RPA to say that he had received his SPS payment (for SPS 2005) but it covered only 35.48ha instead of 38.64ha. RPA said they would look into that. He confirmed that telephone conversation in writing the next day.
- E95 On 5 August 2006 Mr C sent RPA a letter from his new bank which put the additional interest he had incurred from 10 May 2006 to 27 July 2006 at £91.27. He had also incurred a £50 overdraft arrangement fee. Mr C told RPA that he expected either them or his old bank to reimburse him.
- E96 On 23 August 2006 RPA's chief executive sent the Member a letter of apology and explanation about the payment of Mr C's Stewardship and SPS claims. He apologised for the inconvenience and confusion that their failure to properly update Mr C's bank details had caused. Without covering all the facts, the letter said that RPA had mistakenly updated only one of Mr C's SBI numbers and had corrected that after Mr C wrote to them on 17 May 2006. It said that they had paid the Stewardship claim to Mr C's old bank account on 6 March 2006, but that this bank account had been open until 11 April 2006. It also said, in contrast to the facts we have seen in the papers, that RPA had reissued the payment to Mr C on 23 May 2006 and the balance of the payment had been paid to him on 28 June 2006.
- E97 In September and October 2006 Mr C and RPA were in touch with each other, but RPA did not always get through to Mr C when they telephoned him. On 3 November 2006 they replied to Mr C's letters of 26 May and 28 September 2006. The gist of the letter of 3 November 2006 was this. It listed the fields that Mr C had put on his 2005 SPS claim and the area he had established and activated for each field. The figures in the letter added up to 43.43ha, including three fields with non-Rural Land Register references. RPA said they had established the Rural Land Register references for those fields. The letter said that PT[...] and PT[...] were duplicates of fields with Rural Land Register references that were already on the claim. (Removing the duplicate fields reduced the land total to 38.39ha.) The letter also said that field PT[...] was on the claim as 7.35ha but on the Rural Land Register as 7.33ha – RPA said that they had corrected that. (This correction reduced the land total to 38.37ha.) Finally, RPA said that they had calculated the entitlements as covering 35.48ha, but they had input one field [...] incorrectly. They said '*steps are being taken to rectify this omission*'. Mr C has told us that he remains unconvinced by RPA's figures, because their information has been so inconsistent.
- E98 On 5 November 2006 Mr C wrote to RPA saying that it was RPA's responsibility to recover his Stewardship payment. He said that he had had to raise an extension overdraft to cover his business expenses. On 14 November 2006 RPA told Mr C, by letter, that they were unable to reimburse the costs that he had requested. Their letter gave a different account of what had happened from the account given in the chief executive's letter of 23 August 2006, and concluded that RPA had made the original payment acting on the information available to them at that

- time. Mr C has told us that he believes RPA are incorrect on this point.
- E99 On 19 November 2006 Mr C wrote to RPA saying that, as he had already told them, he believed his agent had miscalculated the area of his holding. In commenting on a draft of this report, Mr C has told us that he (now) believes it was RPA that miscalculated, not his agent. He said that this miscalculation had affected his SPS payments as his holding was 10 hectares less than it should have been.
- E100 On 21 November 2006 Mr C challenged the account RPA had given in their letter of 14 November 2006 about his bank payments. He also asked if one person could look after his case. We have seen no sign that RPA acted on that request, but we have seen that, at the end of November 2006, RPA considered whether or not to offer Mr C financial redress. An RPA lawyer confirmed that a £50 payment by way of apology was justified given the error RPA had found. (RPA started the work needed to make that payment, but lost the payment submission. They then reconsidered the question of interest, but the papers we have seen are unclear about the final reason why they decided against making an interest payment.) RPA finally sent their letter about the payment by way of apology on 8 February 2007 and made the £50 payment itself on 18 February 2007.
- E101 On 6 December 2006 RPA wrote to Mr C, in response to a query he had made about the calculation of the historic element of his SPS entitlements.
- E102 On 16 December 2006 RPA told Mr C, by letter, that his old bank had told them that they had received his Stewardship payment on 6 March 2006 and that he had had access to it until 11 April 2006. They said that RPA had successfully paid his Stewardship claim and he should take the matter up with the bank if he wished. On 21 December 2006 Mr C asked for further clarification and repeated that it was RPA's responsibility to recover the Stewardship payment or to reissue it to him with interest.
- E103 In January and February 2007 Mr C continued to dispute RPA's stance on the bank details, the land area included in his claim and their calculation of his entitlements. His Forest Friendly Farming adviser intervened on his behalf and asked RPA, twice, to give Mr C's case to a single person to resolve, given Mr C's hearing difficulties. In March 2007 Mr C telephoned RPA about the problems he had had with his 2005 and 2006 SPS claims. He said that it was causing him financial trouble and he had had to borrow money from the bank. Mr C queried his 2006 SPS partial payment with RPA as it was lower than he thought it should have been. RPA told him that only one field had been activated and this would account for the lower payment. I have covered the facts of Mr C's 2006 SPS claim in a separate part of this chronology. In the same month, the Member intervened again, asking RPA to look into the various problems in Mr C's case. On 28 March 2007 RPA sent Mr C a copy of the maps for his holding.
- E104 In November and December 2007 RPA looked into Mr C's claim on the relevant common. They asked him for more evidence of his rights on the common and explained what they needed, but the material he then provided was insufficient. In January 2008 they removed the relevant common grazing rights from his 2007 SPS claim. In February 2008 RPA accepted some further evidence from Mr C (a mortgage agreement) as confirming his rights. On

28 February 2008 they told him his allocation details for the relevant common were:

A	Area of common	79.23 hectares
B	Agricultural area of common grazed	79.23 hectares
C	Livestock units (LUs) entitled to be grazed on the common	252 LUs
D	Livestock units he was entitled to graze on the common	5 LUs.

RPA told Mr C that his total common land allocation was 1.572ha (B ÷ C x D).

E105 Mr C disagreed with RPA's calculation. In March 2008 he asked RPA why he had been allocated only 1.572ha when in 2001 he had been awarded common land of 2.08ha and five animal grazing rights. He sent them a copy of a RPA letter dated 19 December 2001 about his common land forage area allocation for 2001, which said the common area (and grazeable forage area of the common) was 104.82ha, not 79.23ha. It said:

A	Total area of common	104.82ha
B	Total grazeable forage area of common	104.82ha
C	Total LUs entitled to be grazed on the common	252
D	Total LUs Mr C was claiming on the common	5

E Mr C's total forage area allocation for the common 2.08 a (B ÷ C x D).

E106 Mr C's contact with RPA about his common land allocation continued throughout 2008, without RPA's letters of explanation resolving matters. At 30 April 2009 Mr C's grievances about the payments to the closed bank account in 2006 and about the land area covered by his SPS claim (including his common land rights allocation) were unresolved in his view.

E107 In summer 2010 Mr C told us that he remained unconvinced by RPA's decision on his common land and the approach they took to his complaint about his bank account, as well as their decision about the activation of his 2006 claim.

### **Mr C's description of the effect on him of receiving a reduced 2006 SPS payment**

E108 We asked Mr C how his problems with the RPA had affected him. He made a joke about not having a nervous breakdown and explained he was just annoyed that RPA would not listen to anything he said. He said he wanted the money. He said that in 2007, when his SPS payment was less than expected, he had just had to manage on his overdraft. But his bank had been after him all the time. He has told us that in 2008 he sold his interest in some land in order to clear a loan and interest that had built up partly because RPA had not paid his 2006 SPS claim as expected. We noted that relatively small things had added to his frustration. For example, Mr C told us he had had to pay excess postage when RPA sent him the papers for his appeal and that he always used registered post for RPA now, since they

lost a recorded delivery letter (about milk quota).

### **Some comments from Mr C on a draft of this report**

E109 We shared a draft of this report with Mr C and his representative. In commenting on the draft, he said:

*'I am a cheerful personality and try not to get depressed. But [this experience with RPA was difficult, what] with the loss of my ex-wife Pauline and partner during July 2004 with leukaemia after 44 years, and the RPA attitude, [and] finance for the business is hard to find as I was not allowed my full entitlement under SPS.'*

E110 Mr C has also said that he was disappointed that our recommendation for remedy stopped short of asking RPA to pay him the full amount of his SPS 2006 claim. He said that RPA had received his claim on 4 May 2006. The extended deadlines that year meant they had time to return his claim, he said. He also told us that he had told RPA several times about his deafness. Mr C and his representative have also told us that they believe RPA should have understood from their contact with Mr C in September and November 2006 that he had intended to activate the same entitlements for SPS 2006 as he had for SPS 2005.

## Mr D

### About Mr D

- E111 In 2005 Mr D ran a small arable farm, of about 40 hectares (100 acres), in the East of England. He also did some contract farming work. The value of his 2005 SPS claim would have been about £8,094<sup>98</sup> if he had activated his entitlements as he intended. His wife ran a small toy business. Mr D is still farming, but his wife closed the toy business in 2008.
- E112 Mr D has said that in 2005 he relied on the original guidance sent out by RPA when he completed the claim form, although he probably had received the supplementary guidance they issued in April 2005. He has said that he found the timescale for completing the claim was tight. At the time, his father was dying.

### The 2005 claim

- E113 On 11 May 2005 RPA received a 2005 SPS claim (SP5 – see glossary) from Mr D. His form applied to establish his entitlements but not to activate them. On the form he had said ‘no’ to the question about applying to activate entitlements. He had made no entries in column J of the field data sheets which asked for the ‘*area for which entitlements to be activated*’. He did not give a date in response to the question about the date from which land would be at his disposal for a continuous period of 10 months. Mr D had claimed protein crop premium, which was a separate subsidy from SPS.

### RPA’s handling of the claim from May 2005 to March 2006

- E114 RPA completed their initial checks on the form on 12 May 2005 and the further checks when keying in the claim on 27 July 2005. The papers we have seen show no contact between RPA and Mr D until 16 February 2006, when RPA wrote to Mr D with his definitive entitlement statement (see glossary). This showed he had 36.57 entitlements worth €11,869.60 (£8,094 at the 2005 SPS exchange rate).
- E115 On 27 March 2006 RPA wrote again to Mr D. They said that they had completed the processing of his 2005 claim and had made a payment. The payment statement they enclosed showed a payment of £1,356.56, but penalties had reduced it to nil. (Mr D has said that he has not received an explanation for the information on the payment statement, which should not have included any penalties.) He has said he contacted his local rural support group and they suggested that he may have omitted to activate his entitlements.

### Mr D’s representations to RPA from April to October 2006

- E116 On 4 April 2006 Mr D telephoned RPA asking why he had not been paid anything. They told him that he had not activated his entitlements. The same day, he wrote to them. On 21 April 2006 RPA noted that Mr D had asked them if his mistake, in not activating his entitlements, could be amended now. RPA noted that they were awaiting guidance from their RITA delivery expert (see glossary).
- E117 On 24 April, 4 May and 10 May 2006 Mr D telephoned RPA about his claim. They were unable to explain matters, but said they were

<sup>98</sup>His 2005 entitlement statement put his entitlements at €11,869.60. The 2005 SPS euro conversion rate was €1 = £0.68195.

waiting for advice from their RITA delivery expert. On 11 May 2006 RPA sent a standard letter to Mr D about partial payments (see glossary). They said that there had been problems with their delivery of SPS payments.

E118 On 16 May, 26 May, 7 June and 20 June 2006 Mr D, or his wife, telephoned RPA to ask for updates on the claim. By this stage Mr D's case was being considered by the SPS scheme management unit. On 29 June 2006 RPA replied to his letter of 4 April 2006. They said that he had omitted to complete column J on his claim and they were in the process of *'implementing an adjustment mechanism'* which would enable them to recalculate Mr D's entitlements and make any associated payments if possible. That might take some time, they said, but they would contact him again if his claim was to be adjusted. They asked Mr D not to contact them further as they were striving to make payments on all claims, including his, as quickly as possible.

E119 On 12 September 2006 Mr D telephoned RPA again saying that they had agreed to look into his case in June 2006 and he was still awaiting a response. On 19 September 2006 the Member (Mr Alistair Burt MP) wrote to Lord Rooker, the Minister responsible for RPA. He was concerned that RPA had not told Mr D whether or not he would be paid for 2005. He said Mr D was: *'left completely in the dark about any future payments'*. On 2 October 2006 Lord Rooker wrote to the Member. He explained that RPA had thoroughly investigated Mr D's case and had unfortunately been unable to accept the errors on his claim form under the 'obvious error' provision and therefore RPA would be unable to make payment for his land that had been established, but not activated. Lord Rooker said that Mr D would have

qualified for payment, but the information in his claim form was consistent in showing no wish to activate his entitlements. The Minister added that applicants were under no obligation to activate their entitlements and a large number of applicants had chosen only to establish them. He explained how Mr D could appeal against RPA's decision.

E120 On 13 October 2006 Mr D telephoned RPA; his telephone bill shows that the call lasted just over three minutes. Mr D has said that during that call an officer called [name] (reference 9606) assured him that he would definitely be paid, but she could not say when because 3 per cent of claims were outstanding. (RPA have told Mr D that they have no record of that telephone call.) No payment arrived. Mr D has said: *'Since I had made no alternative funding arrangements, things were getting desperate'*. On 19 October 2006 he telephoned RPA again. RPA agreed to pass on a message. On the same day they noted that Lord Rooker had sent a letter (to the Member) with a decision to turn down Mr D's representations. They wrote directly to Mr D. He then telephoned RPA saying that he wanted to appeal against their decision not to pay him for his 2005 SPS claim. He has told us that, if RPA had given him that decision earlier, he would have gone through the appeal process sooner. He has said that staff on the helpline had always been encouraging and had always called back when they said they would, even though it might take a week at times. He said that, although staff would not commit themselves, they had said that it appeared to be an 'obvious error' and that they thought it could be sorted out. The letter sent in June 2006 had confirmed his impression that he would be paid eventually. From his point of view the letter was not generic, but was intended for his particular case – it had

contained his reference number and had said that claims ‘including yours’ would be paid as soon as possible.

### Mr D’s appeal – Stage 1, from November 2006 to February 2007

E121 On 13 November 2006 RPA received Mr D’s appeal against their decision not to make any payment for his 2005 SPS claim. He said that:

- he had always intended to claim payment and did not change his mind during the process;
- he had always claimed IACS payments and his business was unlikely to survive without them;
- he accepted that he had misinterpreted the rules and had placed undue weight on paragraph 320 on page 86 of the 2005 SPS Handbook (Annex B, paragraph B2), which said that you could not activate entitlements on land where entitlements have not been established;
- he had assumed activation would follow establishment;
- he had used the helpline on a couple of points but he had believed he was clear on this point;
- with hindsight, he could now see that elsewhere in the 2005 SPS Handbook it said that you were supposed to establish entitlements and activate them on the same form, but that was a new approach and he had not realised that was the case;
- when he realised he had made a mistake, he told RPA, who gave him generally positive assurances that it was being sorted out and

he got the impression that he would, at some stage, be paid; and

- on 13 October 2006 RPA had told him categorically that he would be paid; on 19 October 2006 they wrote to him to say he would not be paid.

E122 On 14 November 2006 the Member wrote again to Lord Rooker about Mr D’s case. Among other things, he referred to an advertisement in the *Farmers Guardian* of 21 April 2006 which indicated that the failure to activate entitlements was one of the three most common errors on the form.

E123 On 9 February 2007 the customer relations unit officer looking after Mr D’s case, received legal advice on his appeal. The RPA lawyer said there was no legal basis to use the ‘obvious error’ provisions or the ‘force majeure’ provisions to allow payment of the claim. On 14 February 2007 RPA upheld the decision not to make a payment to Mr D and, the following day, sent him the Stage 1 appeal decision. It noted that:

- Mr D accepted that he had misinterpreted the rules, because he believed that he could not activate his entitlements where they had not been established and he therefore assumed that activation would follow establishment;
- it was clearly laid down in the 2005 SPS Handbook that establishment and activation would be undertaken at the same time on the claim form and that applicants should enter the area for each parcel of land on which they wished to activate entitlements in column J;
- it was unfortunate that Mr D did not see this information until after he had

completed the form; however, by signing the form, Mr D was confirming that he had read and understood the guidance notes;

- it was unfortunate that Mr D mistook the validated entitlement statement to mean that he would be receiving a payment, but that letter was a generic letter sent to all SPS applicants and it stated: *'If you have applied to activate entitlements under the Single Payment Scheme in 2005 your payment will be based on the entitlement information shown in this statement'*, which indicated that payment was only made when entitlements had been activated;
- Mr D's claim had been considered, and rejected, under the 'obvious error' provision. Mr D's circumstances in early 2005 did not amount to 'force majeure' and, in any case, 'force majeure' did not cover the amendment of errors in a claim form;
- RPA appreciated the difficulties that Mr D might have faced at the time of completing his 2005 claim form, however, they considered that he could have sought help with the completion of his form; and
- it was the applicant's responsibility to ensure a complete and correct claim form was received at RPA within the deadline and that was a matter that was within Mr D's control.

### **Mr D's appeal – Stage 2, from March 2007 to July 2007**

E124 On 21 March 2007 RPA received Mr D's Stage 2 appeal. He said that the Stage 1 decision appeared to be based around 'obvious error' or 'force majeure' and that was not his argument. Mr D said that he had given details of his circumstances to indicate the pressure

he was under at the time of completing his 2005 claim. Mr D said that he had made an honest mistake and the information he had received from RPA and the treatment he had received from them throughout 2006 had led him to believe that his mistake could, and would, be rectified. Mr D said that RPA had acknowledged in 2006 that common errors on claims for that year had included the absence of information needed to activate entitlements. He also said that the 2007 SPS instructions had been revised and were much clearer and shorter. Separately, Mr D also asked RPA to take account of his account of the October 2006 telephone conversation in which RPA had told him he would be paid. They did this in April 2007 by amending the chronology included in the record of the Stage 1 appeal decision. But they took no further action about the alleged misdirection.

E125 On 8 June 2007 an RPA appeal panel heard Mr D's appeal. It upheld RPA's original decision that Mr D had not complied with the SPS rules in his claim. The panel noted that they reached their decision notwithstanding Mr D's account of receiving misleading information from RPA about his payment in October 2006. Mr D has said that he received the impression that RPA staff influenced the panel's decision making, which made him feel the hearing was biased in RPA's favour. The Minister accepted the panel's recommendation. On 11 July 2007 RPA wrote to Mr D saying that the Minister had rejected his appeal. In August 2007 Mr D met the Member, who said he would make representations to the Minister. On 6 May 2008 the Member referred the complaint to me.



## Mr D's description of the effect on him of losing the 2005 payment

E126 Mr D has told us that for 2005 his farm accounts showed a current account credit balance of £4,000. In 2006 there was an overdraft of £8,000 and in 2007 the overdraft was £5,500. He gradually increased his overdraft facility, which peaked at £13,000. He has said:

*'If I had known at the beginning of this shambles (April 2006) that I definitely would not be paid, I could have planned a more structured way of overcoming our financial problems, instead of constantly playing catch-up with overdrafts. I would have been pretty annoyed, but I do think that we could have avoided some of the things that happened which cannot now be reversed.'*

He has talked about the impact on his wife's toy business (which, without his cash support, closed in 2008 after 19 years' trading); about having to sell land; about cutting household costs, including family holidays; about cutting investment in machinery and maintenance of the family home; and about losing confidence in his ability to complete the forms – he now pays an agent £300 a year. The situation was particularly difficult for his wife. He has said she feared the worst and became very depressed. Mr D's letter, setting out the effect on him, the business and the family, is in Annex C to this report.

## Further developments

E127 As part of our work in assessing whether or not to investigate Mr D's complaint, my Office asked RPA why Mr D had received no payment for protein crop premium for 2005.

RPA looked into Mr D's claim for protein crop premium and, as a result, paid him £327.14 on 30 January 2009.

## Some comments from Mr D on a draft of this report

E128 We shared a draft of this report with Mr D and his representative. Mr D's representative told us that Mr D felt that justice had been done and he would like the Ombudsman to 'know that this piece of work had restored his faith in our democracy'. The representative said: '[Mr D's] family have really struggled at times over the last five years, and the recommended payments will go a long way towards getting their lives back to normal'.

## Mr and Mrs E

### About Mr and Mrs E

E129 Mr and Mrs E were sheep farmers in 2005, and still are. They run a flock of about 600 ewes in the East of England on land which they hold on 50-week grazing agreements with different people. The agreements are specifically designed not to give them any rights over the land. Their 2005 SPS claim would have been worth about £5,355<sup>99</sup> if they had activated their entitlements as they had intended.

E130 Mrs E has said that in May 2005 she had not understood what RPA meant by '*a forage area obligation*', for example, in their guidance to claiming SPS. She has said that she and her husband could not afford to use an agent to look after their paperwork. However, someone in RPA's Cambridge office who '*knew everything inside out*' had always been able to answer their queries. That service was no longer available in 2005 and RPA's new customer service centre dealt with all telephone calls. Mrs E has also said that in early 2005 she was receiving chemotherapy treatment for cancer.

### The 2005 SPS claim

E131 Mrs E's recollection of filling in her 2005 SPS claim is this. She had filled in the claim form and had ticked the box for activation. She then went through the form with a neighbour and this led her to query whether or not she should activate. She called the RPA helpline to check her understanding, they told her that she could not claim for special entitlements unless she had a minimum of

0.1ha of land registered and that she should ring another helpline. She has told us that this did not surprise her since a friend had been told the same thing. She spoke to two other bodies, neither could help her. Mrs E's telephone records, which we have seen, show that she telephoned RPA on 5 May 2005 at 15.28. The call lasted five minutes. She called another rural development body at 15.35 and this call lasted just over four minutes. She called the Rural Development Service, a non-departmental body that answered to Defra and is now part of Natural England,<sup>100</sup> at 15.44. That call lasted almost seven minutes. Her recollection is that the Rural Development Service referred her back to RPA.

E132 RPA later told Mrs E they had no record of her telephone call. But we have seen a note made on 5 May 2005 at 15.36 saying that she had not received her SP5a claim form, or the CREG01 form used to register her business with RPA. The note said that RPA had '*sent a RITA request*', which we have taken to mean a request for the forms. Mrs E was already registered with RPA and has said that she did not ask for or receive a fresh set of forms.

### RPA's handling of the claim from May 2005 to October 2006

E133 RPA received Mrs E's 2005 claim form on 12 May 2005. Question 2 on the claim form was about establishing entitlements subject to special conditions – this covered people like Mr and Mrs E who had livestock, but no land. Mrs E said '*yes*' to establishing entitlements subject to special conditions. Question 4 was

<sup>99</sup> Their 2005 entitlement statement put their entitlements at £7,852.63. The 2005 SPS euro conversion rate was £1 = £0.68195.

<sup>100</sup> Natural England was set up in October 2006, bringing together English Nature, the Countryside Agency and the Rural Development Service from the Department for Environment, Food and Rural Affairs (Defra).

about the activation of entitlements subject to special conditions. It said:

*'If you have applied to establish entitlements subject to special conditions, please confirm that you wish to activate as many of these entitlements as can be supported by your agricultural activity in 2005.'*

The claim form showed that Mrs E had originally marked 'yes' to this question, but had amended the form on 9 May 2005 to 'no'.

- E134 The claim passed RPA's Level 0 validation check (see glossary on Validation) on 13 May 2005. An RPA officer signed the checklist and made a note saying: *'Producer has the choice whether or not to activate entitlements and he has not'*.
- E135 On 21 February 2006 RPA sent Mr and Mrs E a non-validated entitlement statement. It showed two special entitlements with a total value of €7,852.63 (£5,355). They said they would not be able to make any payments until the claim had been validated and if they did not make contact, there would be no need to contact them.
- E136 On 19 March 2006 RPA carried out a further check of the 2005 claim, recorded on a form called a *Processing Special Entitlements (SEs) – Checksheet*. They noted that they had not received an SP16 form from Mr and Mrs E. (The SP16 form provides details of a farmer's livestock.) The check also noted that Mr and Mrs E had said they did not want to activate special entitlements on their claim form and no payment should be made to them. On 24 March 2006 RPA wrote to Mr and Mrs E. The letter said: *'You did not return an SP16 form which indicates you did*

*not have any livestock from 1 January 2005 to 1 November 2005'* and without that, their entitlements had not been 'activated' and they would not receive a payment on them for 2005. (There had been no mention of an SP16 on the SPS claim form or in the 2005 SPS Handbook, but a leaflet enclosed with farmers' entitlement statements said that farmers who had established special entitlements, *'should have already received from the RPA form SP16'*.) The letter included a standard paragraph asking farmers not to contact RPA.

- E137 On 5 April 2006 RPA sent Mr and Mrs E a definitive entitlement statement. This showed entitlements amounting to €7,852.63 (£5,355) for the 2005 scheme year – the same as in the non-validated statement. On 10 April 2006 Mrs E sent RPA a completed SP16 form and said she hoped that the information she had supplied would be sufficient to activate her claim. She said that she had contacted RPA on 28 March 2006 and on 3 April 2006 requesting the SP16 form, but it had not arrived. The NFU had given her a copy.
- E138 In May 2006 RPA returned Mr and Mrs E's 2006 SPS claim, because they had not provided any field data or activated their special entitlements – without one of those actions the form could not be lodged. (In commenting on the draft report, Defra and RPA said:

*'The letter is a standard letter sent to all applicants who have failed to enter sufficient detail on to their form meaning it cannot be validated. The letter was not advising with regard to an obvious error, it simply advised that the form could not be processed as it did not contain sufficient information.'*)

Mrs E replied by telephone and in writing. In June 2006 RPA wrote to Mr and Mrs E saying that they had been allocated special entitlements for 2006. Mrs E rang the RPA helpline on 29 September and 3 October 2006 about her 2005 payments. The person who dealt with the second telephone call told Mrs E that there was an issue with the special entitlements element of the claim because she and Mr E had confirmed that they did not want to activate the entitlements. They said RPA were looking at her case to see if they could accept the mistake on the form as ‘obvious error’.

E139 RPA wrote to Mr and Mrs E on 6 October 2006. The letter said:

*‘As you did not make an amendment to your claim, or notify us of any error on your application from before our decision was communicated to you, it is now not possible to amend your application to activate Special Entitlements in 2005. You are, however, still able to apply to activate the Special Entitlements you hold in future scheme years, including 2006.’*

### **Mr and Mrs E’s representations to RPA from October 2006**

E140 Mrs E complained to RPA on 30 October 2006. She said RPA staff had told her in May 2005 that she was unable to activate entitlements because she and her husband did not own any land to claim against and she described RPA’s contact with her about the SP16 form. She asked RPA to look into her case.

E141 On 1 November 2006 RPA telephoned Mrs E to confirm she wanted to activate her special entitlements. Later the same month, on 24 November 2006, an NFU representative

contacted the Member’s office about Mr and Mrs E’s case. The Member’s office referred the complaint to RPA the same day.

E142 RPA wrote to Mr and Mrs E on 1 December 2006. They had looked into her case, but they said they had no scope to ‘reactivate’ the entitlements for 2005. They also explained matters to the Member’s office.

### **Mr and Mrs E’s Stage 1 appeal – January 2007**

E143 RPA received Mrs E’s Stage 1 appeal form on 30 January 2007. Among other things, she said that:

- the 2005 Handbook’s guidance on special entitlements was ‘*incomprehensible*’ and that she had initially indicated on the form she wanted to activate them; and
- because the guidance was so confusing, she had telephoned RPA’s helpline and been incorrectly told that she had to register at least 0.1ha of land to activate special entitlements.

E144 In February 2007 RPA telephoned Mrs E and again asked whether she wanted to activate her entitlements for 2006. She said yes.

E145 On 18 April 2007 an RPA lawyer commented on RPA’s draft appeal decision about Mr and Mrs E’s case. The lawyer said she agreed that the ‘obvious error’ regulations did not apply in this case. She also said that the administrative error (of suggesting in March 2006 that but for a missing form, RPA would have activated their entitlements) did not amount to maladministration. However, she also said that the RPA might want to consider the claims that the Handbook advice was confusing and that the customer helpline’s advice was poor. She referred to previous criticism of the

helpline. She gave no direct advice on how RPA might take those claims into account.

E146 On 23 April 2007 RPA sent Mr and Mrs E the Stage 1 appeal decision, rejecting the appeal because there was no scope to allow it within the 'obvious error' regulations. The case summary (but not the covering letter) apologised for the confusion about the SP16 form – they had told Mr and Mrs E that they should have received and returned an SP16, but RPA had not sent them one. It also explained that RPA had no record of a telephone call with Mrs E in May 2005 and so they had no way of knowing what was discussed during the call or what advice was given. In commenting on a draft of this report, Defra and RPA said:

*'RPA did advise that [Mr and Mrs E] had subsequently submitted an SP16 but that it could not be accepted as they had declared on their 2005 form that they did not wish to activate their entitlements subject to special conditions. RPA further stated that the SPS application form could not be amended to activate the special entitlements for payment as there was not an obvious error.'*

### **Mrs E's Stage 2 appeal – June 2007 to April 2008**

E147 On 20 June 2007 RPA received Mr and Mrs E's Stage 2 appeal. Mrs E had taken legal advice about the appeal, thanks to a grant of £250 she received through her membership of the NFU. Among other things, she said:

- she had been misled by Agency staff when she telephoned them on 9 May 2005;
- she was entitled to expect that advice from the RPA's helpline would be correct and to rely on that advice and that RPA's duty to ensure the CAP fund was properly

distributed encompassed a duty to ensure that applicants were given proper guidance and advice;

- *'it is submitted that the RPA has checked the SP5 form for this sort of error/internal inconsistency in the years following 2005, and that if any consistency constitutes an obvious error in 2006, it will constitute an obvious error in 2005'*;
- RPA had argued that having too little stock to activate all the entitlements could be a reason for not activating special entitlements, but Mr and Mrs E's SP5 form had showed they did have enough livestock units in that year; and
- that the wrong and misleading advice Mrs E received should constitute exceptional circumstances, which would entitle her to have the claim reconsidered, because RPA had a duty to provide proper guidance and customers were entitled to rely on that advice.

E148 On 25 June 2007 Mrs E provided a copy of her telephone records from April to July 2005. She said she had previously told RPA that she had contacted the RPA helpline on 9 May 2005, but it was on 5 May 2005. She said that after *'contemplating the confusing advice given for 4 days I then amended the form as instructed and sent it off on 9.5.05'*. The Member also wrote to the Minister, drawing the appeal to his attention.

E149 On 18 March 2008 an RPA appeal panel rejected the appeal. The note of the appeal panel decision said that, although Mrs E was sure she had been misled, there was no evidence to support her claim that she had been given incorrect advice; the answer given

to question 4 of the claim form could not be considered to be an 'obvious error'; and there was no evidence produced to show that the RPA had given misleading advice. On 1 April 2008 the appeal panel secretary completed a submission to the Minister and on the same day the Minister accepted the recommendation to reject the appeal. On 2 April 2008 RPA sent Mr and Mrs E the decision.

E150 The Member asked the Minister to reconsider the case, but he said that he was constrained by the Regulations and unable to grant the appeal. On 9 May 2008 the Member referred the complaint to me.

### **Mrs E's description of the effect on her of losing the 2005 payment**

E151 Mrs E has told us that she and her husband were '*getting on a bit*' and usually paid someone to help out in busy periods. They were unable to do that without their 2005 SPS payment. She said, as a result, when it came to lambing in 2006 they were in trouble and did not even get all the sheep home. She said that they had called their son, who had dropped everything (he was self-employed) and came over to help them out. She said that he went home after lambing, put his house on the market, and came back to the farm to help them out permanently. Mrs E said they would not still be farming if it had not been for their son. Mrs E said it was very stressful; she was just getting over cancer and it had been a terrible time. She said they that they had incurred extra fuel and telephone costs and had to complete extra paperwork for the appeals, as well as the £100 cost of the appeal. Mrs E's son has told us that he considered they had lost about two day's business, which

he defined as two nine-hour days at £12.50 an hour.

### **Some comments from Mr and Mrs E on a draft of this report**

E152 We shared a draft of this report with Mr and Mrs E. They had no comments to make except to confirm the accuracy of the facts as we had recorded them.

## Mr F

### About Mr F

E153 Mr F is a livestock farmer, farming about 5 hectares (12.4 acres) in the East Midlands of England. He rents his land. His holding includes the family farm's suckler cows. His family have a separate, larger holding, set up for dairy farming. The value of his 5ha SPS claim would have been about £12,080 in 2005,<sup>101</sup> if he had avoided making a dual claim for the land he used under a grazing agreement. This was a relatively large sum for the land area, which reflected the size of the historic part of his entitlements. Mr F's dual claim meant he paid a penalty for overdeclaration that wiped out his 2005 and 2006 payments as well as part of his 2007 payment. In 2005 Mr F was 47 years old.

E154 Mr F has told us he had known the owner of the grazing land for some years and had a 'gentleman's agreement' with him about the land. The owner died in December 2004.

E155 The medical evidence we have seen says that Mr F was completely fit and well until 1999 when poison contaminated his farm. A doctor's report prepared in February 2005<sup>102</sup> said that he had severe chronic fatigue syndrome, and that his history was highly suggestive of organophosphate poisoning. It meant he was unable to work and run his business. The papers we have seen also show that Mr F had had a stroke in 1999. Mr F has told us that his health has improved very much since 2005. In his comments on a draft of this report, made through his representative, Mr F

said that RPA had never taken his health status into account.

E156 Evidence provided in September 2005, by a consultant physician and clinical toxicologist at Guy's Hospital in London, said that in 2003 Mr F had, with other assessments, been assessed for his cognitive and memory function. The doctor's letter said: *'This showed his verbal reasoning abilities to be less well developed than his non-verbal abilities, with long-standing learning difficulties in the verbal domain'*. Mr F has told us that Guy's Hospital advised him to write things down as soon as he thought of them, as he would forget things very easily.

### Mr F's request to change his reference period

E157 In April 2005 Mr F completed a form asking RPA to change his reference period (form SP2). He said that a person had put poison on the farm and he provided papers to show the effect. He also gave RPA a copy of a letter to his GP from a specialist, dated 8 November 2004. The letter said that a fat biopsy suggested Mr F had had an abnormally high exposure to certain pesticides and set out how those might affect him. The letter said possible results included chronic fatigue syndrome and neurological damage. RPA have said they received both these documents.

### The 2005 claim

E158 In 2005 Mr F was looking after his SPS claim himself. Farm Crisis Network, now his representative, was not involved and Mr F has told us that he and his parents did not feel able to afford an agent to look after their separate claims. Mr F has said that on

<sup>101</sup> His 2005 entitlement statement put his entitlements at €17,715.15. The 2005 SPS euro conversion rate was €1 = £0.68195.

<sup>102</sup> The report was prepared for a bank by a doctor who explained that she had a particular interest in environmental medicine and that Mr F had also been seen by the Medical Toxicology Unit at Guy's Hospital.

1 April 2005 and 1 May 2005 he and his parents met RPA staff at the RPA office in Nottingham. His recollection is that the person he met at RPA made notes on his file about the meeting and added the papers provided by Mr F. He has said he had to book appointments to see an RPA official. Mr F's two letters to RPA, of 10 May 2005, refer to these meetings. RPA have no record of the meetings with Mr F on 1 April or 1 May 2005.

E159 Mr F has told us he had two concerns when he met RPA: the effect of the organophosphate poisoning on the amount he would receive in his SPS claim; and the land covered by the grazing agreement. Mr F has told us that he asked RPA for advice on both points. He informed them that his landlord had died and explained that his landlord had told him he could use the land for grazing for as long as he wanted. Mr F's memory of what happened is that RPA told him to write separate letters, one about his SPS claim and the other about his health problems.

E160 On 20 April 2005 the late landlord's agent wrote to Mr F. His letter said:

*[The late landlord's sister] has been in touch with me and she says you've told her you'd like the grasskeeping again. There is still £800 outstanding from last year so before I can consider a new agreement I must be paid up to date.'*

E161 Mr F has said that the rent was part of the reason why he did not go to the agent with his query about who should claim for the land covered by the grazing agreement. In Mr F's view, the rent was not a problem. He has told us that he saw the agent regularly at auctions (the agent was also the local auctioneer), but the agent never raised the issue about his

rent money. In any case, the rent would be deducted from any money due to Mr F from the sale of his stock at auction.

E162 We have been unable to establish when the grazing agreement for 2005, mentioned in the agent's letter of April 2005, was made. Mr F is unable to recall whether or not he had received his copy of the licence when he completed his claim. He has said that he believes he paid the rent in June 2005. Mr F and the landlord's agent have each been unable to give us a copy of the 2005 agreement. However, the agent did have a copy of the 2006 agreement. The 2006 agreement specifies that Mr F should **not** claim SPS for the land it covered.

E163 On 9 May 2005 the late landlord's agent submitted a 2005 SPS claim. The agent said the landlord had died on 19 December 2004, that they had sent RPA details of the executor of the estate, and that they would send the grant of probate in due course.

E164 On 12 May 2005 RPA received Mr F's claim form by hand. He has told us that his father handed in both the family's SPS claims. (Mr F's complaint is about only his holding. The claim for his parents' holding was successful.) RPA have told us that the letter they received with Mr F's SPS claim, dated 10 May 2005, was about the poison and his reference period. It said:

*'Further to our meeting on the 1-04-05 at Chalfont Drive Nottingham, with having the disaster of the poison being put down on our holding it would be in your best criteria to start my base year in 1997. This was when the first lot of poison was put down. It was the 8-02-97, see the papers provided and*



*then three more lots were also put down between 1999-2000.*

*'It wasn't until spring 2001 that the real disaster took place where we lost a lot of cattle. It is now 2005 and we still haven't got the chemical cleared up. I have now picked it up myself from the cattle. See the paperwork.*

*'I hope DEFRA could pull their fingers out a bit more so we can get thing under control. I do not know how to do the single farm payment scheme because it is difficult to run a business with so much worry. To top all of this off I have been under a TB2 restriction [a movement restriction on stock] for the past 26 months.'*

E165 RPA have said they received a covering letter with the same text, but a different reference, for Mr F's parents' claim.

E166 Mr F has said the family gave RPA a further letter dated 10 May 2005. We have seen, from Mr F's papers, a letter dated 10 May 2005 and with reference 22/295/0147. It said:

*'Further to our meeting on the 1-05-05 at Chalfont Drive Nottingham. I put fields on my IACS from [six field references]. I want all these fields deleting if [the late landlord's estate] decide to claim so it will not jeopardize with any of my claim. I also enclose a copy of my health report as explained in previous letters.'*

Mr F added a postscript: *'The reason this needs to take place is because [the landlord] has died'*. I refer to this as the letter about the grazing land. RPA have told us they have no record of receiving this letter. The letter omitted one further field covered by the grazing agreement.

E167 At our request, RPA have checked their electronic and hard copy files for Mr F and for Mr F's parents' SPS claims and for the requests to amend the reference period – in case the letter about the grazing land was misfiled. They have told us that the missing letter was not in any of the files. In commenting on a draft of this report, Mr F has said that this missing letter was raised at his Stage 2 appeal but not followed up by RPA.

E168 The effect of Mr F's mistake at this point was not only that his SPS claim overdeclared the land that was *'at his disposal'*. RPA have told us he also claimed 0.7ha of non-agricultural land. Under SPS Regulations, both mistakes meant RPA would impose financial penalties, set by the scale of the overdeclaration.

### **RPA's handling of the claim from May 2005 to December 2006**

E169 On 12 May 2005 Mr F's SPS claim form passed RPA's initial checks. Among other things, the checklist said: *'Refer to desk instructions if a clear request for assistance has been made or request for contact to be made by the farmer'*. The RPA officer noted that there was a letter with the claim form. RPA have told us that there is no evidence that any further action was taken in response to this letter. On 24 May 2005 RPA wrote to Mr F about his claim, asking him to initial his amendments. On 10 June 2005 they received the initialled and dated pages of Mr F's 2005 claim. They also received a letter from him dated 3 June 2005 saying that his landlord had died. On 23 June 2005 RPA wrote to Mr F about his claim to amend his reference period. They agreed to use the period 1997-99 instead of 2000-02.

E170 On 10 November 2005, RPA wrote to Mr F to ask why he was claiming the same fields as someone else. The fields they queried were: *[six field references]*. Mr F had listed all of these fields in his letter of 10 May 2005 about the grazing land, except for one.

E171 RPA must have written in similar terms to the landlord's agent, because on 11 November 2005 the agent wrote to them. The agent said Mr F had a short-term licence to graze/mow the land but did not occupy it for 10 months. They said Mr F had told them, that day, that he would write to RPA. His letter, received on 20 December 2005 by RPA, said that he had had the land on a 10-month tenancy for summer grazing over the previous seven years.

E172 On 5 January 2006 RPA wrote to Mr F asking about a further dual claim on field [...]. Mr F had included this field in his letter of 10 May 2005. Mr F replied by telephone and RPA asked him to put his reply in writing. We have not seen a letter in reply. They wrote to him again in January and March 2006. He replied to their letters in early April 2006. He explained that he had made a mistake and the land was being claimed by his landlord. He said he had declared this on the IACS 22 form in May 2005, *'with the letter about [the landlord] dying so it didn't jeopardize with any of my claim'*. RPA have told us they have no record of receiving an IACS 22 form in 2005 from Mr F.

E173 On 7 August 2006 RPA received a telephone call from Mr F asking about his payment. They told him it was awaiting validation and did not mention that penalties had reduced it to nothing. They said the same thing when he telephoned them on 1 September 2006 and on 25 September 2006. Mr F has told us that, in one of the telephone conversations in late

2006, RPA told him not to worry about his dual claim.

E174 Mr F telephoned RPA again on 27 November 2006. They told him his payment was authorised but they could not say when he would receive it. He telephoned again on 28 December 2006 and this time they explained the situation. They asked Mr F to appeal.

### **Mr F's Stage 1 appeal – from January 2006 to August 2007**

E175 Mr F wrote to RPA on 28 December 2006 and RPA received his Stage 1 appeal form on 15 January 2007. He said his grounds for appeal were that he had declared what he had done when he submitted his claim. He also provided medical evidence and an undated extract from a grazing agreement. It is unclear whether this is from the agreement for 2005 or an extract from the 2006 agreement, which it matches. Mr F and Mr M have told us that Farm Crisis Network became involved in his case in April 2007.

E176 On 22 February 2007 RPA's Exeter office made their recommendation on the appeal. They said:

*'Mr F states he sent in a letter asking us to remove the fields in question should the landlord claim for the same fields; he has included this letter with his appeal form. No record can be found that the RPA received this letter. Regardless of the letter, the handbook clearly states the following: page 26 paragraph 63. "You should resolve issues concerning whether land is 'at your disposal' before you make a claim. If you do not and it is found that the land was not at your disposal reductions will be*

*made as you will have overdeclared your area.” Mr F did not come to an arrangement with his landlord before claiming to ensure that there was not a dual claim. Therefore I recommend that we uphold our original decision and Mr F’s penalties should stand.’*

E177 On 26 February, 5 March, 8 March and three times in April 2007, RPA noted further telephone calls from Mr F. He asked about his 2006 payment. They gave him varying messages. At first they told him that it seemed he was not going to receive a payment for 2006 because of an overclaim. But, in later calls, RPA gave him the information shown on the system, which suggested that the 2006 claim was simply awaiting authorisation. Also in March 2007 RPA decided to treat Mr F as a rural stress case. Among other things, this meant that the rural stress team tracked the progress of his case. RPA’s payments system shows that they paid Mr F £10,157.70 on 9 May 2007. They have told us that this was his SPS 2006 payment, made to him in error. They paid him a further £128.55 in August 2007 – the modulation payment.

E178 On 19 June 2007 an RPA officer in the customer relations unit referred Mr F’s case to the legal team. The officer’s memo said:

*‘Mr F submitted a claim in 2005 to establish and activate entitlements on a total of nine fields. Checks revealed that he was not eligible to claim on seven of those fields as they were also being claimed upon by his landlord, who had recently passed away.*

*‘The current decision to remove the seven fields with penalties has resulted in a total loss of payment for 2005 with a penalty of the same amount being deducted over the next three years.*

*‘Mr F has submitted with his appeal a letter dated 10 May 2005 in which he asks that six fields be removed from his application if his Landlords estate should claim on them. Unfortunately we have been unable to locate a copy of this letter within RPA. It is possible however that a copy may be on the SFP file which has been mislaid. I believe that we should accept this letter and remove the fields under the notified error provisions without penalty.*

*‘That said however, the removal of these fields do not help Mr F as one of the dual claim fields [...] – 4.65ha was not covered off in his letter of 10 May and given that the eligible fields on his application total just 5.15ha the removal of [...] still creates a 90 per cent discrepancy resulting in total loss of payment.*

[...]	NA1	0.70
[...]	PP1	4.45
		5.15ha

*‘However, we do have a letter from Mr F dated 03 June 2005 where he advises that [the man] who he rents the land from which is on his application has died. Although this letter does not specifically ask for fields to be removed it does confirm that Mr F rented land. I believe that this should have alerted RPA to the possibility of a dual claim between landlord and tenant and to check with Mr F whether he or his landlord had the right to claim. If it is that [sic] we can accept this letter as notification we can remove [...] without penalty and pay Mr F on the remaining eligible fields.’*

E179 On 29 June 2007 a member of RPA’s legal team gave his advice on Mr F’s case. He said that,

under the notified error rule, RPA needed to be satisfied that the farmer had informed them in writing of the irregularity if he or she was to avoid dual claim penalties. He said: *'Inform implies a high standard [...] and we have applied this to ourselves in the context of an irregularity'*. He said he felt Mr F had not *"informed"* RPA but he was willing to be proved wrong if the reason he had sent the letter was directly linked to Mr F's entitlement to claim SPS on the land in question.

E180 On 18 July 2007 the customer relations unit officer told the legal team that she believed they had reached the point where they had no alternative except to reject the appeal. On 6 August 2007 the RPA lawyer emailed her. He said:

*'We discussed this case in person today. The farmer has had the maximum overdeclaration penalty applied. I agree this is the only decision we can make under the regulations, and feel it is correct as it was clearly in the Farm Business Tenancy with his landlord (in respect of the dual claimed parcels) that he should not claim SPS on them.'*

RPA's papers do not include any consideration of whether or not they should have taken account of Mr F's health problems in handling his claim. On 7 August 2007 RPA wrote to Mr F with the Stage 1 appeal decision. They enclosed a case summary, which gave their decision and the reasons for it. They had decided to uphold the decision to apply penalties to his claim. In theory, that meant no payment for 2005 and a forward penalty for later claims.

E181 On 19 September 2007 RPA received Mr F's Stage 2 appeal. He said that in his letter of

10 May 2005 it had been his intention to make it clear that the fields should not be included (he acknowledged in a separate document that he had omitted one field) and that he felt he was entitled to payment from his livestock for the reference years 1997, 1998 and 1999. He said the purpose of his appeal was to receive that money.

### Mr F's Stage 2 appeal ends

E182 On 11 February 2008 an appeal panel heard Mr F's Stage 2 appeal against the application of penalties on his 2005 claim. Mr F and his representatives attended the hearing in Nottingham. Mr F said he had not approached the land agent because he owed the agent some money.

E183 On 26 February 2008 the customer relations unit sent the Minister their submission about Mr F's case. It said:

*'The circumstances would not have constituted force majeure or exceptional circumstances as it could not have been unforeseeable that Mr F might experience difficulty in completing the form given his illness was longstanding, and he had not taken any steps to mitigate the effects of his illness by seeking advice when completing the form or getting someone to complete it on his behalf.'*

Later on the same day the Minister's office replied saying that he had agreed to the panel's recommendation to reject the appeal. The next day RPA sent Mr F the decision. RPA's payment system shows that they paid him £7,629.08 on 5 March 2008 (and a modulation payment of £161.41 on 9 September 2008). They have told us that this was Mr F's SPS 2007 payment, made without penalty by mistake.

E184 From June 2008 to October 2009 RPA received further representations about Mr F's case. On 8 July 2009 the Member referred Mr F's case to the Ombudsman. RPA's work on the appeal did not identify the error in claiming the non-agricultural land. The dual claim obscured the earlier penalty imposed by the RITA computer system.

### **Mr F's description of the effect on him of the penalty**

E185 We asked Mr F about the impact on him of dealings with RPA about his 2005 SPS claim. He told us that the money he lost, which he put at £15,000 to £18,000, was worth about half the farm's income. He said that not getting the SPS money was like '*having your legs pulled from under you*'. Mr F said that he had had to remortgage after what he calls the disaster of the poisoning incident. He fell behind with payments, and in 2006 received a possession order. After that he started his relationship with Farm Crisis Network in 2007, but it had been hard for him to ask for help. He said that the problems he had with RPA were a '*contributing factor*' to getting behind with the mortgage payments, which led to the possession order. They had also had an effect on his health.

### **Some comments by Mr F on a draft of this report**

E186 We shared a draft of this report with Mr F and his representative. He told us, through his representative, that it portrayed a genuine account of what had happened. He also said that he felt a lack of information from RPA meant that he remained uncertain about how his SPS payment (particularly the historic element) was made up; what penalty RPA had intended to collect from him; and over how many years that penalty was meant to run.

## Mr G

### About Mr G

E187 In 2005 Mr G ran a small arable farm of about 14 hectares (35 acres) in the East of England. He took over the farm from his father and he has said that, because his farm is small enough for him to have time to earn a living from other things, he is a part-time farmer. His 2005 SPS claim would have been worth about £2,292<sup>103</sup> if he had activated his entitlements as he intended. Mr G is still farming.

### The 2005 claim

E188 In 2005 Mr G wanted to register a meadow on the Rural Land Register, in preparation for his 2005 SPS claim. Under the SPS rules, the meadow was newly eligible for subsidy as permanent grassland.

E189 RPA wrote to Mr G on 16 February 2005 to acknowledge his IACS 22 claim to register land on the Rural Land Register. They said it might not be possible to process his claim in time for the field details to be reflected in his pre-populated 2005 SPS claim form. They said if this was the case, the SPS guidance would explain how Mr G should amend his SPS claim form. Mr G has said that the problems he had in registering the land meant he felt short of time to complete the claim. He felt that it had been impossible to get information from the helpline, which he called 'useless'. He said the SPS Handbook and other information had arrived at his busiest time of year and he had not had time to absorb all the information it contained. He has told us that he does not recall receiving the supplementary guidance, which included a list of common errors on forms.

E190 RPA received Mr G's completed 2005 SPS claim on 7 May 2005, with sketch maps showing his fields. On the form he had put a cross in the 'no' box at part C (question 3) to say that he did not wish to activate his entitlements. He also did not complete column J of the field data sheet. Mr G has said that this was because he believed from paragraph 320 of the 2005 SPS Handbook that he could not activate the fields before the land areas were settled and the entitlements established. He thought RPA would contact him to activate his entitlements when they had completed his registration and established his entitlement.

### RPA's handling of the claim from May 2005 to March 2006

E191 On 9 May 2005 RPA completed the Level 0 validation (see glossary) of Mr G's claim. They returned the form because he had not initialled some corrections. They received his corrected form on 12 May 2005. On 18 July 2005 they completed a further checklist when they keyed in the claim. Mr G had told us that in May 2005 RPA also wrote to him, after he had returned his claim, to confirm that they had registered his field.

E192 On 21 February 2006 RPA wrote to Mr G to say they had found a number of inaccuracies in the digitisation of his land and they had made some changes. Mr G told them that the changes RPA had made were wrong. He provided the correct details for his fields and asked RPA to amend their records. Also on 21 February 2006 RPA sent Mr G a non-validated entitlement statement (see glossary) showing that his 15.91 entitlements had a total value of €3,744.56 (£2,554). The accompanying letter explained that it was not

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<sup>103</sup> His 2005 definitive entitlement statement put his entitlements at €3,699.12. The 2005 SPS euro conversion rate was €1 = £0.68195.

a definitive entitlement statement because there were still some ‘validation tasks’ outstanding for the claim. It said:

*‘The number and value of entitlements allocated to you, as set out in the accompanying statement, could reduce or increase as a consequence of validation. This will be rectified when your claim has been fully validated and an updated statement will be issued in due course.’*

They said they would not be able to make any payments until the claim had been validated. They said they hoped to complete the majority of validation cases without contacting customers direct and if they did not make contact there would be no need to contact them. They said:

*‘Validation of claims such as yours is currently our highest priority, and we would therefore be grateful if you could refrain from telephoning for general updates on your case, as this will divert RPA staff from validation work.’*

### **Mr G’s representations to RPA from April 2006 to July 2006**

E193 Mr G telephoned RPA on 28 April 2006. RPA’s note of the call said they told him they were working as quickly as possible to validate all claims. They received Mr G’s completed 2006 SPS claim form on 9 May 2006. On 7 June 2006 Mr G telephoned RPA about his 2005 SPS claim. RPA’s note said: *‘I advised him that all tasks were closed but it has not been passed on for payment as yet and that the payment window is open until end of June’.*

E194 RPA wrote to Mr G on 26 June 2006. They told him that they had been unable to *‘resolve all the issues associated with your Single*

*Payment Scheme (SPS) claim’.* They said that to get some payment to him quickly, they were in the process of sending him a partial payment of 80 per cent of the value of his entitlement of his claim and would pay the final balance once they had completed the validation of his claim. They said the partial payment was based on a recent calculation of his claim. They said if, after validating the claim, the partial payment was more than the full payment Mr G would have to repay the difference. On 27 June 2006 RPA sent Mr G a remittance advice for a £379.57 part-payment of his 2005 SPS entitlement.

E195 Mr G telephoned RPA on 3 July 2006 to say he had received a payment but RPA’s letter had told him he would receive 80 per cent of his SPS payment. RPA told Mr G to put his concerns in writing. He telephoned RPA again on 7 July 2006 about the partial payment he had received. RPA told him that validation checks were still being made on his 2005 claim.

E196 Mr G wrote to RPA on 10 July 2006 asking RPA to pay his 2005 SPS payment. He said that he had only received £379.57 and he expected to receive £3,371.79. He said Agency staff had told him there were no outstanding tasks with his claim so he could not understand why he had not received his payment.

### **RPA tell Mr G they cannot pay his claim**

E197 RPA telephoned Mr G on 20 July 2006 to tell him he had failed to activate his entitlements on the 2005 claim form and the recent payment had been a mistake. RPA’s note of the telephone call said that they told Mr G to send them a letter of appeal to say he had made an error when he said he didn’t wish to activate his entitlements. A note on RPA’s file

- explained that their scan of Mr G's 2005 claim showed that column J had been left blank, but their computer records showed they had amended the 2005 claim to activate a total area of 2.78ha. They had no explanation of why some fields had been activated, but noted they had now amended their records to show that no land had been activated.
- E198 Mr G wrote to RPA on 21 July 2006 with a letter of appeal. He said he had recently been told that he had completed his form incorrectly and RPA had failed to tell him about this for months. He said following RPA's recent advice, he was writing to RPA to confirm that he wanted to activate his 2005 entitlements.
- E199 On 26 July 2006 RPA sent Mr G a definitive entitlement statement (see glossary) for the 2005 SPS year. This showed 14.3 entitlements worth a total of €3,699.12 (£2,292). RPA's letter said that if Mr G had applied to activate his entitlements in the 2005 SPS year he would receive his payment shortly.
- E200 On 24 August 2006 Mr G telephoned RPA chasing his SPS payment. RPA told him that his claim was still being progressed and it should not be too much longer before he received payment.
- E201 On 7 September 2006 Mr G telephoned RPA. He said he had received an entitlement statement dated 26 July 2006, telling him that he had been allocated his entitlement and would shortly receive some payment. He thought that this letter had been in response to his letter of 21 July 2006 asking RPA to activate his entitlements. RPA told him that this would not be the case as they had not yet responded to his letter. They said their records showed that '*validation was still in progress*'.
- RPA made a note for them to respond to his letter and for the processor dealing with Mr G's claim to contact him about the activation of his entitlements.
- E202 On 14, 22 and 28 September 2006 Mr G telephoned RPA. They told him his claim was showing as '*validation in progress*' and his claim was being worked on. But when he pressed them, they looked at his case. They saw no grounds to accept his claim under 'obvious error' and told him that he was not eligible to receive any payments. They told him he could contact their customer services team. He said he had done that in July 2006. On the same day RPA found Mr G's letter of 21 July 2006 on their system. Mr G telephoned RPA on 2 October 2006. A manager in the customer relations unit said that they would escalate his case to the appeal stage as she was confident that his letter of 21 July 2006 would not change their decision about his 2005 entitlements. She said they would send him an appeal pack. Mr G complained that RPA had led him to believe for a number of months that he would receive payment and the manager apologised for the inaccurate information.
- E203 On 13 October 2006 Mr G telephoned RPA. RPA's note of the telephone call said he told them he had received the appeal form, but his neighbour had received payment without appealing. RPA told Mr G to complete the appeal form.
- E204 The Bedfordshire & Cambridgeshire (Beds & Cambs) Rural Support Group wrote to RPA on 13 November 2006 on behalf of Mr G. They said that, although Mr G had made the mistake by not applying to activate his entitlements, RPA's failure to deal with his field registration had contributed to his mistake.



## Mr G's appeal about his claim – Stage 1

E205 On 17 November 2006 RPA received Mr G's Stage 1 appeal form. These were the grounds for his appeal:

- He had always intended to apply for payment in 2005.
- He had been experiencing some delay with RPA in registering his field and had to proceed with his SPS claim form on the basis that the field changes were unresolved. (The IACS form had been passed to the Reading office, changes registered and then passed back to the Northallerton office). He said that, after reading paragraph 320 of the 2005 SPS Handbook [Annex B, paragraph B2], *'I was quite sure that I was not allowed to activate my entitlements before the land areas had been established, and would be penalised if I attempted to do so. I interpreted these instructions as meaning that all land areas had to be settled and agreed before entitlements were granted and then activation would follow. (By telephone or through a follow up form).'*
- He now accepted his interpretation of RPA's 2005 Handbook was wrong, he had no one to check the form for him and in the past he had delivered his IACS forms to the Cambridge office in person. Staff had checked the forms for him, but this service was not available for the 2005 SPS.
- After he had submitted the claim form, he received confirmation of the registration of the field and then presumed the establishment of his entitlements would be processed.

- In February 2006 he received a provisional entitlement statement and also received a letter that showed inaccuracies in his land area because of the incorrect recording of field numbers; he pointed this out to RPA at the time and thought these inaccuracies were the reason for non-payment of the 2005 SPS.
- He telephoned RPA on various occasions, who told him that everything seemed to be all right with his claim and there were just a few outstanding tasks.
- In June 2006 he received a letter promising 80 per cent part payment, but he received only a small payment and queried this; he was eventually told in July 2006 he had not activated his entitlements and immediately asked RPA to amend this. But it was not until September that RPA properly explained what had happened to his claim.

E206 Mr G telephoned RPA on 27 November 2006 about his appeal. RPA told him that it had gone to the customer relations unit, who would contact him in due course. He also enquired about his 2006 claim. RPA said they would contact him direct if there were any problems with his 2006 claim.

E207 Mr G telephoned RPA again on 8 February 2007. RPA told him that the appeal had been passed to their legal team. He then asked about his 2006 payment. RPA told him that payments would commence shortly but could not give any idea when they would be paid. On 27 February 2007 an RPA lawyer gave his comments on the draft decision about Mr G's Stage 1 appeal. He said he agreed that there was no legal basis for amending the claim. He also commented on Mr G's allegations of maladministration. He said

he did not believe maladministration had occurred. His reasons for that were, in summary, that the allegations about the land registration process had been made many times before, but the 2005 SPS Handbook was clear about what to do if registration had not been completed; and the allegation about being repeatedly told by the customer service centre to await payment was also common, but he doubted that the customer service centre went beyond saying that payment would be based on the content of the claim form and, in any case, Mr G did not lose anything as a result.

E208 RPA wrote to Mr G on 7 March 2007. They said the Stage 1 appeal had upheld RPA's decision not to allow Mr G to amend his 2005 claim form to activate his entitlements. RPA attached a case summary setting out the Stage 1 decision. It said:

- it was unfortunate Mr G misinterpreted RPA's guidance that in 2005 establishment and activation of entitlements would be undertaken at the same time on the claim form;
- RPA had issued clear and detailed guidance on how to complete the 2005 claim form and it was for Mr G to ensure he had completed the form correctly before submitting it;
- there was nothing on Mr G's claim form to indicate that he wanted to activate his entitlements and it is possible for a farmer to claim the SPS without activating his entitlements for the 2005 SPS year; RPA had no basis to use the 'obvious error' provisions; and

- after receiving partial payment in 2006 Mr G contacted RPA who subsequently told him that he had not activated his entitlements; he wrote to RPA in July 2006 to say that he did want to activate his entitlements; as this request was received after 31 May 2005 he was too late to amend his claim.

E209 The Stage 1 appeal decision also said:

*'Careful consideration has been given as to whether there has been an "obvious error" (as defined in EC Working Document AGR 49533/2002) in this case, in accordance with Commission Regulation (EC) 796/2004, Article 19.'*

It concluded there was no legal basis for RPA to use the 'obvious error' provisions.

E210 Mr G has said that the Stage 1 appeal decision failed to note the details of paragraph 320 of Agency's 2005 guidance; or to consider whether it was unfair of the Agency not make a payment given that they had provided him with a partial payment and assured him he would receive payment; or to refer to their letter of 26 June 2006 which had said he would receive part payment of his claim to the value of 80 per cent. In commenting on the draft report, Defra and RPA said: *'RPA does refer to the content of paragraph 320 of the Handbook (although it does not quote it directly) in the appeal decision. It is listed in [the section] "Part D-Scheme Literature"'*.

### **Mr G's appeal about his claim – Stage 2**

E211 On 2 May 2007 RPA received Mr G's Stage 2 appeal. He said:

- he made a mistake in failing to activate his entitlements because of delays and errors by RPA in his land registration;
- RPA's letter of 26 June 2006 told him he was going to receive a partial payment of 80 per cent and he also received several telephone calls from RPA in August and September 2006 which created a 'legitimate' expectation that he would receive his payment; he said that under public law RPA was not entitled to breach this expectation; and
- RPA had not referred to the misleading wording in their guidance (paragraph 320 of the 2005 SPS Handbook).

E212 The Stage 2 appeal hearing, which Mr G and Mr L attended, took place on 28 June 2007. A barrister attended the hearing with them, as an observer. The appeal panel noted that Mr G had changed his appeal to the grounds of 'obvious error'. Although Mr G had marked box C (question 3) to say he did not want to activate his entitlements, the appeal panel accepted that he marked the box without understanding the implications as his intention was to activate entitlements. They found that there was no other information accompanying the claim from to show that box C (question 3) had been marked incorrectly. They recommended that Mr G's appeal was disallowed. However, they said they were 'dismayed' to learn that RPA had sent Mr G a letter on 26 June 2006 to say he would receive 80 per cent of his payment for 2005; incorrectly made him a part payment; and that staff were unaware of the true position of his case for a long time. The appeal panel considered that RPA's actions: *'have seriously misled the applicant and caused him considerable distress'*.

E213 Mr G has made three points about the appeal hearing. He has said that the appeal panel secretary, who is part of the customer relations unit, participated in the matters discussed during the appeal hearing; the panel seemed unfamiliar with some aspects of the SPS – one of them thought the Agency had operated drop-in clinics to assess claims in 2005, when this facility was not available; he felt the panel were entirely led by the SPS expert (an Agency employee); and it seemed the panel had no power to recommend a payment for remedy for the maladministration they had identified.

E214 On 12 July 2007 RPA wrote to Mr G to tell him that the Minister had considered the appeal panel's findings and agreed with their recommendation to reject the appeal. They said that the Minister's decision could be challenged by way of judicial review, but if Mr G considered RPA had acted with maladministration he could ask his MP to pass his complaint to me. It is not clear, from the papers we have seen, whether or not RPA have recovered the £379.57 they paid Mr G by mistake.

### **Mr G's description of the effect on him of losing the 2005 payment**

E215 Mr G has said that because of the marginal return on his small farm holding, he has a part-time engineering business to supplement his income. He said when his 2005 payment was denied he had to stop investment in machinery, rethink his cropping plans and defer his bill payments to make ends meet. In June 2005 he replaced his van – paying for it upfront. He has said that he generally will only buy something if he has the money to pay for it, but this time he stretched his budget

slightly. He had had no doubt that he would receive his SPS payment.

E216 He has also described how his family have cut back on household spending. He told us that he believes it took 15 to 18 months for the knock-on effects of losing the 2005 payment to work through. At one point he had just £300 in his business current account, when he would usually expect to have at least four figures. He ended up on pills for hypertension (high blood pressure), which cost him about £120 a year until he reached 60 in April 2011. He now receives free prescriptions. He also started using an agent to do his SPS claim because he lost confidence in his ability to do that after 2005. Using the agent has cost £270-280 plus VAT each year since 2006. Mr G puts the cost of his and Mr L's time at £500 for the day required to attend the Stage 2 appeal. On the same basis, he puts the cost of preparing for the hearing at £100.

### **Some comments from Mr G on a draft of this report**

E217 We shared a draft of this report with Mr G and his representative. Through his representative, he told us that the report gave a clear summary of his case and the circumstances around it. He emphasised the tangible financial effect on him of the stress he suffered because of his experience with SPS 2005 (paragraph E216).

## Mr H

### About Mr H

<sup>218</sup> In 2005 Mr H was (and still is) an arable farmer, running a tenanted farm of about 93 hectares (230 acres) in the East Midlands of England. His SPS claim would have been worth about £20,245<sup>104</sup> in 2005 if he had activated all of his entitlements as he had intended (see glossary for *entitlements and activation*). In 2005 Mr H sought guidance from an adviser about how to complete the SPS forms correctly, because he shared ownership of some land. But he completed his own claim form.

### The 2005 claim

<sup>E219</sup> On 3 May 2005 RPA received Mr H's SPS claim in Nottingham. Mr H had answered yes to question 3 in part C of the form, confirming that he wanted to activate entitlements.

<sup>E220</sup> The first completed field data sheet had some deleted fields and details of four fields covered by a tenancy agreement. Mr H did not apply to establish or activate entitlements for any fields on this sheet. The fields on the second sheet were all deleted. On the third sheet, Mr H applied to establish entitlements for all 12 fields, but did not apply to activate any of them. These fields covered about 70ha of his holding. On the fourth sheet, he applied to establish and activate the land in all three entries. On the summary page of the field data sheet (which was for farmers' own use and not part of the claim) he wrote that he was applying to establish entitlements for 93.33ha and to activate entitlements for 7.50ha. The figure of 7.50ha was the amount of his set-aside. He had activated 17.70ha.

<sup>E221</sup> Mr H has told us that, following the meeting with the adviser about completing the claim form correctly, he had completed his claim form. He made a mistake when he forgot to complete column J on one page of it. Mr H said he was unaware of his error until RPA told him about it in 2006.

### RPA's handling of the claim from May 2005 to February 2006

<sup>E222</sup> On 3 May 2005 Mr H's claim passed RPA's Level 0 validation check (see glossary on validation). On 29 June 2005 the claim went through a further checklist when RPA keyed it in to their system. The claim then went through the system-based Level 1 and Level 2 validation checks. On 15 August 2005 RPA noted a land area error in Mr H's claim. They wrote to Mr H about his claim the same day, quoting task number 185526 and asking him to confirm the part field areas for a land parcel. On 18 August 2005 Mr H confirmed that he accepted the changes as correct.

<sup>E223</sup> On 16 February 2006 RPA sent Mr H his definitive entitlement statement (see glossary for definitive). The covering letter said all validation checks had been completed and he should receive his payment within the next few weeks. It said that payment would be based on the entitlement information shown in the statement '*if you applied to activate entitlements under the Single Payment Scheme in 2005*'. The statement showed 93.33 entitlements valued at €29,686.39 (£20,245). Mr H has said (in his correspondence with RPA) that he recalls telephoning RPA after receiving his statement.

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<sup>104</sup> His 2005 entitlement statement put his entitlements at €29,686.39. The 2005 SPS euro conversion rate was €1 = £0.68195.

### Mr H seeks an explanation from RPA – March 2006 to August 2006

E224 On 27 March 2006 RPA sent Mr H his payment statement showing £2,411.71 and the next day they sent him a remittance advice for the same amount. RPA's records show that Mr H telephoned them on 28 and 29 March 2006 about his remittance advice, with no record of his earlier call to them about his entitlement statement. On 3 April 2006 Mr H wrote to RPA. He asked for an explanation of the difference between the entitlement statement and the payment. They replied on 10 April 2006, saying that his entitlement statement had not been validated and that he should submit queries about payment only when he had received his definitive entitlement statement. On 18 April 2006 Mr H replied that he had received a definitive statement and that he needed to work out why his payment was only about a seventh of what he was expecting. He asked them to check that all the information on his claim had been transferred, particularly 12 fields mentioned on one sheet, which made up the bulk of his claim.

E225 On 10 May 2006 Mr H wrote to RPA again. He said he had taken advice and asked them to consider his error in column J as a clerical error, as set out in the 2005 SPS Handbook's section on 'obvious error'. On 24 August 2006 he wrote to RPA asking them to confirm that they were going to consider his query about his 2005 claim soon. He referred them to his earlier letters of 3 April, 18 April and 10 May 2006.

### RPA tell Mr H that they will activate all his entitlements – September 2006

E226 On 4 September 2006 RPA noted that they could consider Mr H's case as 'obvious error' and that they had sent the relevant papers to the scheme management unit. On the same day the same officer wrote to Mr H to say that RPA had concluded they needed to adjust their records for his mistake in not activating his entitlements. They said they would regard it as an 'obvious error'. The letter also said:

*'We are in the process of implementing an adjustment mechanism which will enable us to re-calculate your entitlement and make any associated payment. However, I'm sorry to tell you that we will not be in a position to start adjusting entitlements for some time yet. We will contact you again to confirm once we have adjusted your claim.'*

E227 At the end of September 2006 RPA noted 'ECR071 task raised'. An undated document which appears to be about this action, because it was completed by the same person, said: 'Column J has been completed in e-channel on behalf of the producer as an obvious mistake (he forgot to activate his land parcels on pages 20-21 of his claim form)'.

### Mr H's requests for RPA to make payment

E228 In November and December 2006 Mr H contacted RPA about his 2005 payment. He telephoned them three times in January 2007. In February 2007 Mr H and the Member's office contacted RPA about Mr H's case. The Member's office telephoned again in early March 2007. RPA noted their concerns about discussing the case with the Member or his office without evidence that Mr H had authorised the Member to discuss his case

with them. Also in early March 2007 RPA telephoned Mr H to tell him they were still waiting for the work on his 2005 payment to be completed. In March to April 2007 RPA completed their checks on the 2005 payment and on 26 June 2007 they submitted it to finance for payment. The payment referral said it was:

*'A [rural] stress case and going through ECR71 as the national reserve was left of [f] his 2005 claim. We have therefore manually calculated the claim.  
Claim value £20,244.64  
Less 5 per cent modulation £19,232.41  
Payment received £2,411.71  
Total due: £16,820.70*

*'If we proceed with this it will not be setting a precedent as it is not going beyond the scope of the partial payments already made.'*

### **RPA decide they cannot activate Mr H's entitlements**

E229 Also on 26 June 2007, Mr H's whole caseworker (see glossary for whole caseworker) received an email from RPA's rural stress mailbox. He noted, and colleagues confirmed to him, that Mr H should not be paid. In July 2007 the Member's office telephoned RPA for an update. RPA said that work on the case still seemed to be in progress. Later in July 2007 the NFU contacted RPA on behalf of Mr H. The NFU said:

*'The RPA now state that the case is with the legal department and will not say why or what the problem is. Mr H is a tenant farmer and this money is critical to his business and cash flow is tight now and for the coming months.'*

On 24 July 2007 RPA cancelled the manual payment.

E230 On 30 July 2007 RPA responded to the NFU. They said:

*'We are sorry that your member's case is taking so long to resolve. There is, as you correctly state, an issue over whether the 2005 claim form was correctly completed and it is being studied by our Legal Department. It appears that, because your member did not activate all his entitlements in 2005, we are not able to make a larger payment. However, we will write to your member within the next week clarifying our final position.'*

E231 On 2 August 2007 Mr H wrote to his whole caseworker. He said the whole caseworker had telephoned him three weeks earlier and said that he would call again the same week to update him about his 2005 claim, but that call had not happened. Mr H said he was becoming more and more concerned and that nearly 12 months had passed since RPA's letter saying they would accept the problem as clerical error and pay him. He mentioned the lack of direct contact with him and said: *'I have made a big financial commitment to help my business on the basis that I would receive my payment sooner rather than later. Financially I am now in a very precarious position and my health is suffering'*. He said the NFU had told him that his case was with the legal department. He asked, if there was a problem, could they please tell him what it was and who was dealing with it. He said he could not believe that a simple clerical error made by him in May 2005 and accepted by them in September 2006 was still not sorted out by August 2007.

E232 In September 2007 Mr H telephoned RPA to ask for an update. On 12 September 2007 the whole caseworker noted that Mr H's 2005 claim could not be paid and that he would tell him that when he called again. The next day, 13 September 2007, a colleague asked the whole caseworker whether she should go ahead with her redefinition work on Mr H's case. The whole caseworker replied that he was waiting for a decision as to whether RPA were treating blank datasheets as an 'obvious error' or not.

E233 On 17 September 2007 the whole caseworker noted that he had spoken to Mr H several times and he was still waiting for an answer about whether or not RPA could pay him for the rest of his 2006 entitlement (although this was about the 2005 claim). He said he was unable to give Mr H more information until his manager told him he could.

### **RPA tell Mr H that they will not pay his full claim**

E234 On 20 September 2007 the whole caseworker wrote to Mr H saying that the RPA could not amend his claim and the reasons for the decision. The reasons were:

*'You indicated in C10 that you wished only to claim on those field and showed evidence that you were fully aware on how to complete the form. Your claim summary, while different from the figure in C10 only indicated a smaller area of land you wished to activate.'*

Column C10 was the name of the activation column in the 2006 claim form.

E235 On 12 October 2007 Mr H wrote to the whole caseworker (RPA received the letter on 23 October 2007). He pointed out that the error he had made was obvious as an error,

for example, because the fields which were not activated were all on the same page. He also asked why RPA had allowed his claim to proceed and be placed on the system when his claim summary was different from his entries in column J. He said RPA's customer care had been '*absolutely zero*'. He also asked how one RPA official's interpretation of the rules could be so different from another's, when both people were following the same rulebook. On 18 October 2007 RPA noted that they had sent out an appeal form.

E236 On 6 November 2007 Mr H spoke to RPA – he was unable to speak to his new whole caseworker. He asked whether the officer who had written to him in September 2006 was still on RPA's system. She was not. He explained to RPA that he had budgeted for the extra money that the decision of September 2006 had meant he would receive and he wanted to speak to the people responsible for that decision. RPA decided they could do no more outside the appeal process and they sent Mr H an appeal pack.

### **Mr H's Stage 1 appeal – November 2007 to May 2008**

E237 On 26 November 2007 RPA received Mr H's Stage 1 appeal form. In the box asking Mr H to detail the decision against which he was appealing, he wrote: '*A total reversal of a decision made by you in September 2006, on which I budgeted, **twelve** months later*'.

E238 In February 2008 RPA's customer relations unit noted that Mr H had telephoned them to chase up his Stage 1 appeal. They arranged for the Exeter office to give Mr H an update, which they did on 26 February. On 27 February, Mr H wrote to RPA asking him to put his 2007 claim before the payments committee '*as*



*a desperate case*’ so that his 2007 payment could be released early. He said he had cash flow problems because of the situation with his 2005 claim and: *‘This whole situation is not only having a significant effect on my farming budgeting but also on my health and well-being’*. Meanwhile, in early February 2008 RPA noted that the suggestion of an ex gratia payment to Mr H might prejudice the appeal process and sought legal advice. The legal team responded saying that there was no legal reason why a botheration payment should not be considered just because the issue might be appealed. They said that the customer relations unit would be best placed to determine if a botheration payment was appropriate. They said that it would be wise to wait until the penalty decision had either been upheld or overturned by the appeal before making a decision on financial redress. The legal advice noted that, if the decision was upheld, and Mr H provided compelling evidence of actual financial loss due to the broken promise, a further compensatory payment might be necessary.

E239 In March and April 2008 first the NFU and then Mr H contacted RPA for an update about his 2005 appeal. RPA’s customer relations unit received further legal advice in April 2008. The lawyer’s advice said it was clear that RPA had handled Mr H’s claim badly by accepting his appeal in September 2006 only to reverse it exactly 12 months later and that farmers might well be able to challenge RPA on the grounds of serious maladministration leading to financial losses for which RPA could be liable. It said that, to date, both legal and the customer relations unit had reviewed the representations from Mr H and, to date, they had not linked financial loss to the broken promise. The lawyer said: *‘They have yet to make out the case for serious*

*maladministration or compensation’*. The advice was to reject Mr H’s Stage 1 appeal on the ‘obvious error’ point and to *‘mention’* his right to complain about maladministration.

E240 On 9 May 2008 RPA rejected the Stage 1 appeal and told Mr H the decision and reasons for it. They apologised for telling him that he would be paid. They said there was nothing in the claim form to indicate ‘obvious error’ and therefore that provision could not apply. RPA also said that Mr H could ask his MP to take his case to the Ombudsman.

### **Mr H’s Stage 2 appeal – July to December 2008**

E241 On 22 July 2008 RPA received Mr H’s Stage 2 appeal, in which he explained why he believed his case met the criteria for ‘obvious error’. In particular, he pointed out that he had completed the land use category for 2005 and asked why he would have done that if he did not intend to activate the fields. He also pointed out that this was a new scheme with new rules and forms.

E242 On 11 November 2008 the appeal panel heard Mr H’s Stage 2 appeal about his 2005 claim. They upheld RPA’s decision not to make payment and said this was because he had failed to activate all the entitlements and the failure did not fall under the ‘obvious error’ provisions. They also noted that they were concerned by RPA’s handling of his case and that they accepted that the letter of 4 September 2006 had had a significant effect on his business decisions.

### **RPA look into Mr H’s complaint about maladministration**

E243 After the appeal panel hearing, an RPA officer gave colleagues a *‘heads-up’* that Mr H’s sister-in-law had attended the hearing and had

mentioned that she knew RPA's new Minister. The officer said that Mr H's sister-in-law might raise his case with ministers or through another route.

E244 On 12 November 2008 the appeals panel secretary telephoned Mr H. He also gave him his email address. The secretary said that he was looking into the issue of why RPA had said they could treat Mr H's case as 'obvious error' and had then changed their mind. The secretary said that, if his appeal failed, he could consider showing how he had been disadvantaged by receiving wrong information. If he was not happy with the outcome he could approach the Ombudsman. The panel secretary contacted colleagues to find out what had happened in Mr H's case. He updated Mr H by email.

E245 On 11 December 2008 the panel secretary produced a submission to the Minister. The submission gave the panel's recommendation and, under the heading of 'risk', said that RPA considered there was no risk in upholding the panel's recommendation. The submission said that RPA accepted they had 'maladministered' the case and proposed a consolatory payment of £500. On 15 December 2008 Tony Cooper, then RPA's Chief Executive, queried the £500 figure. He said that he believed the normal level of payment was £250. The customer relations unit replied and said they had agreed a higher figure because they had not told Mr H for 12 months that they could not accept his case as 'obvious error'. They also said that Mr H's representative at his appeal had argued that Mr H had taken account of the money RPA had told him they would pay him in September 2006 when budgeting for the coming year and that he had taken out loans on the basis of that payment.

E246 On 15 December 2008 the Minister's private office confirmed that she had accepted the recommendation. On the same day, Mr H's sister-in-law emailed the panel secretary with some questions. He replied on 24 December 2008 with the information he had gathered from colleagues. The day before, 23 December 2008, RPA had sent Mr H the Stage 2 appeal decision. Mr H has said that he declined to accept the consolatory payment from RPA.

E247 On 3 March 2009 the Member referred Mr H's complaint to me.

### **Mr H's description of how losing the 2005 payment affected him**

E248 Mr H told us that he completed his 2006 SPS claim successfully on his own but he has used an agent since then. Mr H told us that he bought a small second-hand combine harvester for about £15,000 on the basis that he would receive the payment. Mr H has said that he was not in the red at the bank and could afford to pay it, although it affected his budgeting. We have seen an invoice dated 22 August 2007 for the deposit of £3,166.62 and Mr H has told us that he paid the balance in March 2008. Mr H has also told us that he felt isolated when he realised that he might not get the payment. No one would give him an answer and RPA did not return his calls. He said RPA's actions had caused him 'heartache, turmoil and worry'.

### **Some comments from Mr H on a draft of this report**

E249 We shared a draft of this report with Mr H. He said:

*'If the RPA had sent the correct decision to me in the letter dated 14 September 2006,*

*I would have been spared the subsequent extreme stress, anxiety, lack of sleep, financial management and related family problems. If the decision had been to refuse payment, although I may not have been pleased, I would have not have suffered this subsequent personal torment – something I don't feel I deserve and which I do not ever want to experience again. I would certainly have never committed to making the considerable investment in a replacement combine if my application had not been approved by the RPA. I went ahead with the purchase in the mistaken belief that the money was going to be paid to me in due course. I would not have put myself through the ordeal of going to appeal and then to the Ombudsman if the RPA had not made such a major mistake in leading me to believe that I was entitled to the payment at this time.'*

E250 We also received comments from people who had contact with Mr H during the time that he was waiting for payment from RPA and then making his appeal. An agent who had advised Mr H and knew him through the local discussion group of the Tenant Farmers' Association described her recollection of how Mr H reacted to the written confirmation from RPA that they would treat his mistake as 'obvious error'. She said:

*'When we met at the discussion group, Mr H updated us as to progress and was quite frank as to the impact the "positive" decision had on his business and his personal wellbeing. I recall him commenting on the impact on cash flow and I specifically recall him commenting that he would be able to re-invest in machinery and make decisions that he did not feel he could make before he knew he would receive the whole*

*of his 2005 payment. When he had received the confirmatory letter, at no time did I or, I believe, Mr H believe the decision would or indeed could be reversed.*

*'I was therefore very surprised when Mr H said he had a letter from the RPA reneging on the previous agreement regarding his clerical error. Mr H was understandably confused by this decision as well as shocked and I think it fair to say he appeared almost traumatised by the decision. He told me he would be "appealing" the decision. From that time on Mr H kept the discussion group updated and it was obvious to me and I believe other members of the group, the impact this was having on Mr H – especially when the group expressed disbelief at how the RPA had handled the situation.*

*'I really believe the whole experience has been extremely stressful for Mr H – and I really believe that the most traumatic aspect was the reversal of the RPA's written decision. Mr H was visibly stressed by this decision and I believe he needed considerable support during this period to try to come to terms with the way in which he had been treated by the RPA. The sheer length of time taken by the RPA in the decision process did not help – particularly as this encouraged him to make financial decisions which I do not believe he would have made without having received the RPA's letter. I believe it is particularly upsetting to him that he followed all the RPA's processes and rules but to no avail.*

*'Whilst I do not advise Mr H on the management of his business, I believed from the discussions at the time, the original letter from the RPA was a deciding factor in the decision to purchase machinery and he*

*therefore made a financial commitment to spend approximately £15,000 which he has had to fund from other sources where as he genuinely believed would be funded through the 2005 payment.'*

E251 A representative from Farm Crisis Network also contacted us. He said: *'Mr H has been very frustrated and depressed by the inconsistent and seemingly contradictory messages that have been ongoing from RPA over six years'.*

## Mr I

### About Mr I

E252 Mr I owns a farm in the South West of England. He bought a second farm in late 2002 and in 2003 he merged both farms into one holding of about 187 hectares (462 acres). He claimed SPS successfully in 2005, although he was still waiting for his mapping details to be digitised by RPA (see glossary on Rural Land Register). His 2006 SPS claim would have been worth about £29,600<sup>105</sup> if he had claimed it successfully.

E253 In January 2009 Mr I told us that in 2006 he had read the SPS guidance in detail before completing his claim forms and telephoned the helpline several times. However, he has also said that RPA sent him many booklets, which implied that he did not have time to read them all. He said sometimes calls were not answered and at other times he found himself holding for long periods. He said that, on the one hand, he had not realised how strict the rules were for SPS claims – RPA kept changing things and only some elements seemed to be strict. But on the other hand, he believed that if he signed the form, he was completely responsible for its contents. From his point of view he could not sign the declaration because the information was wrong. He said the declaration was very clear about what a signature implied and it was the declaration that meant he would not complete the form until he was sure the field data was accurate.

### Mr I asks RPA to register his land – February 2005

E254 On 2 February 2005 RPA received Mr I's IACS 22 claim to add land to the Rural Land Register. A month later, on 2 March 2005, they sent him maps showing details of the land parcels they already held for him on the Rural Land Register. Their covering letter explained they were still processing some IACS 22 forms. They added that, if he had further changes, he should submit another IACS 22. Mr I's records show that he contacted them on 10 March 2005. The message he took from them was: *'Just wait'*. He made a 2005 SPS claim without receiving their response, in line with RPA's 2005 guidance. He also claimed an allocation from the National Reserve. This was because his business was not fully established in the reference years of 2000-02, which RPA had used as the basis for the historic element of SPS entitlements (see glossary on entitlements).

E255 On 19 August 2005 RPA wrote to Mr I with details of the land they had added to the Rural Land Register. A fortnight later, on 2 September, Mr I replied in writing. He asked RPA to correct three errors. They were: a field that belonged to a neighbour (which, Mr I said, he had told RPA over a year earlier); some slightly reduced boundaries; and that the maps used old Ordnance Survey data and therefore omitted the new buildings and farm house.

E256 On 4 October 2005 Mr I asked RPA for an update. They asked for more information on his National Reserve claim, which he sent them that month. RPA sent him his allocation in January 2006 and, the same month, Mr I asked them, in writing, how it was calculated

<sup>105</sup> RPA made Mr I a 50 per cent partial payment of his 2006 SPS claim, by mistake. The payment was £14,806.09. It follows that 100 per cent of his payment would have been £29,612.

and whether it included certain land parcels. We have seen no reply to that letter.

### Mr I asks RPA to explain

E257 On 20 January 2006 RPA sent Mr I one of their standard letters saying that they would be reducing the area he had claimed in his 2005 SPS claim because it was more than the area recorded on the Rural Land Register. They warned that an overclaim might result in penalties.

E258 On 1 February 2006 Mr I told RPA that he had not received any digitised maps. He referred to maps he had received for his Organic Entry Level Stewardship claim,<sup>106</sup> which he said confirmed the areas queried by RPA but had one incorrect field area. He said that this parcel [...] needed to be considered with land parcel [...]. He said that he did not believe that any penalty should be imposed since, at the time he had made his 2005 claim, he had had no information from RPA. He asked them to confirm his position by return. Mr I's letter, like his later letters, gave his landline and mobile telephone numbers and the name and mobile number of the farm's general manager. On 2 February 2006 RPA wrote to Mr I again. They said they had changed the details on his 2005 claim to match the digitised information on the Rural Land Register and they listed seven fields which had changed. The parcels queried by Mr I were not mentioned. It seems this letter crossed in the post with Mr I's letter of 1 February 2006, which RPA received on 6 February 2006.

E259 On 16 March 2006 RPA asked Infoterra, their digitised mapping supplier, to update the field parcels queried by Mr I. RPA have confirmed that no one would have updated Mr I at this stage. Mr I's mobile telephone bill shows that he telephoned RPA's 0845 603 7777 helpline number at 15.36 on 20 March and at 16.35 on 21 March 2006. RPA have no record of the calls, that we have seen, and Mr I's recollection is that he was unable to speak to anyone.

E260 On 21 April 2006 RPA announced that they were aware that some 2006 SPS claim forms had gone to customers without pre-populated land and entitlement information. RPA said farmers could fill in the forms they had already received, but they expected to send out pre-populated forms by the end of April 2006. RPA also planned to provide blank forms at their offices and on their website.

### The 2006 SPS claim

E261 On 26 April 2006 RPA received a 2006 SPS claim from Mr I. He had not completed the field data sheets or the section summarising the entitlements he wanted to activate<sup>107</sup> but he had signed and dated the form. His covering letter asked RPA why the claim was not pre-populated and when he would receive completed maps for his farm. He said RPA's guidance notes on cross compliance were uninformative and he asked them to give him some specific guidance on his farm. He made an (ironic) comment about RPA facing penalties if they failed to reply by 28 April 2006.

<sup>106</sup> Organic Entry Level Stewardship is part of the Environmental Stewardship subsidy schemes. The Rural Development Service, now part of Natural England, administers these, using mapping data provided by RPA's Rural Land Register. RPA apply controls as necessary, including inspections, and make the payments for these schemes.

<sup>107</sup> Parts C and E of the claim form.

E262 Mr I's mobile telephone bill shows that he telephoned RPA's 0845 603 7777 helpline number at 13.56 on 3 May 2006. RPA have no record of this call, that we have seen, and Mr I's recollection is that he was unable to speak to anyone. On the same day he wrote to RPA with a second claim form, unsigned but with completed field data sheets, except for the activation column. RPA had pre-populated the field data sheets on this form. Mr I said the form seemed to be incomplete, with many inconsistencies compared with 2005; that numbers had changed on some fields; and that some rented fields had been muddled up. Parts of his letter were unclear, but he obviously needed a response. For example, he mentioned two fields which he rented from a neighbour. It seemed that the neighbour had also claimed for the fields. (RPA have told us that there was a dual claim: both farms had applied to establish entitlements for the fields. Had RPA followed their own guidance, they would have applied penalties to the neighbour's 2005 SPS claim. Instead, they removed the dual-claimed field without applying penalties. RPA have told us that this was incorrect.)

E263 On 4 May 2006 RPA wrote to Mr I, using a standard letter called an SPV1. This is a standard letter intended to tell claimants about omissions in the claim information they have provided. RPA had placed an X next to two items in the letter's list of possible omissions: no entries at columns E2 and/or E3 (the claim for SPS); and no completed lines of field data at part C and/or part D (in the field data sheet).

E264 The letter asked Mr I to respond by 15 May 2006 and warned that failure to comply with the deadline would result in late claim reductions of 1 per cent per working

day being applied to his claim and that they would refuse corrected forms received after 9 June 2006. It also said that the content of his claim form remained his responsibility at all times and acceptance by them for lodging and/or processing should not be taken as an indication that the content was sufficiently complete and correct for payment.

### **RPA postpone the 2006 claims deadline to 9 June, and then to 10 July**

E265 On 5 May 2006 RPA announced that late claim penalties would not apply to claims received between 15 May (the usual deadline for claims) and midnight on 31 May 2006. This meant the final deadline for claims, albeit with a late claim penalty, would be 9 June 2006. Later, on 22 June 2006, RPA put back the date that penalties would apply to 2006 SPS claims from 31 May to 15 June and said they would reject claims received after 10 July 2006.

E266 On 8 May 2006 Mr I wrote to RPA's Northallerton office, enclosing a copy of his letter dated 26 April 2005. He asked for a reply to it and the return of his documents. On 17 May 2006 he wrote again to RPA. He complained about RPA's failure to answer his letters. He said: *'Please get it together and 1) Acknowledge which fields I use, 2) Reply re SPS 06 and send corrected forms, 3) Send me a complete set of maps of all my fields on my farm (I've never had this)'*. He copied the letter to the then Secretary of State (whose office referred it to RPA). RPA's guidance directs staff to try three times to telephone a person before writing a letter. We have seen no evidence that RPA attempted to telephone Mr I. In commenting on the draft report, RPA have said: *'The letter dated 26 April 2005 refers to his 2005 application and the answers to*

his questions are not critical to his ability to complete the 2006 form'. They also said:

*'Mr I certainly contributed to the situation by his refusal to submit the 2006 form until all his questions had been answered. He had much of the information needed from his 2005 form and other correspondence and could have submitted a nearly fully completed form, with an accompanying letter to explain his situation, within time, had he been so minded.'*

E267 On 23 May 2006, it seems in response to the second claim form, RPA sent Mr I another SPV1. On 2 June 2006 Mr I wrote to RPA again. He said that, without replies to his letters of 25 April 2006 and 3 May 2006, he could not complete his 2006 SPS claim. He also made a comment about applying penalties to the department.

E268 On 12 July 2006 Mr I wrote again to the then Secretary of State. Among other things he asked again for a complete set of accurate maps. On 21 and 26 July 2006 RPA noted their action on two 'document response' tasks, which we believe were for the letters of 25 April and 3 May 2006. On 21 July RPA told Mr I, by letter, that they would return the documents that his letter of 8 May 2006 had mentioned. They apologised for their delay.

### **Mr I's maps arrive, he sends RPA a completed form, and they agree to pay his claim – August 2006**

E269 On 1 August 2006 Mr I received a set of maps from RPA. RPA have told us that this will almost certainly have resulted from his letter of complaint to the Secretary of State in which he asked for a set of maps. On 8 August 2006 RPA noted that there was

ministerial correspondence about Mr I's case and that staff should check the mapping data when dealing with his claim. On 9 August 2006 Mr I telephoned RPA. He explained the background to his case. RPA told him that they had not pre-populated his 2006 claim form because his 2005 SPS claim had not been fully validated. They also said that it was unlikely that he would have received no reply from the helpline during working hours. RPA suggested that Mr I should send a claim form with an explanatory covering letter, although they might not accept the claim so far after the deadline. Also on 9 August 2006 RPA noted that they should look into the letters from Mr I which they had passed over because they were over 60 days old.

E270 On 11 August 2006 RPA replied to Mr I's letters of 25 April 2006 and 3 May 2006 and his telephone calls of 9 August 2006. They apologised for their delay in doing so. They gave him this information:

- his first 2006 SPS claim had been received on 26 April 2006 and his second on 10 May 2006;
- part C of the form was not completed as the form was still being validated; they had made the decision to send out blank forms to customers whose claims were still being processed at that stage of processing so they could be returned before the 15 May 2006 deadline. They said that customers were given the option of waiting for the pre-populated form but that might not have been received until just before (or after) the deadline and would have resulted in a late claim being received and therefore penalties would have applied;



- part E of the form was not complete as the form was still being validated. They said they had advised customers to fill out part E and, if they wished to activate all their entitlements, to mark the 'All' box with a cross and to send a covering letter explaining that they had filled out their form to the best of their knowledge; and
- there was a helpline that was available to help with queries.

RPA also said that they were looking into Mr I's queries from his letter of 3 May 2006 about the missing fields and the fields that he was renting from his neighbour. On 14 August 2006 they told him that some of the field numbers had changed, because the Rural Land Register and the Ordnance Survey were constantly being updated. The letter summarised the changes made in his 2006 claim, which Mr I's letter had queried. It also said they would correct the data for the fields he rented from his neighbour.

E271 By this stage Mr I had sent RPA a third 2006 claim form, which they received on 15 August 2006. In that claim, Mr I had hand-written the field numbers and sizes, activated his entitlements and signed the form. His covering letter set out the background and complained about RPA's handling.

### **RPA's handling of Mr I's late claim**

E272 On 30 August 2006 RPA noted that they would accept Mr I's late claim. A RITA delivery expert (see glossary on RITA) had said that no penalties would apply because Mr I had supplied a signed form, even without field data, before the deadline. On the same day RPA replied to Mr I's letter of 9 August 2006

point by point. They confirmed that they would accept his 2006 SPS claim without penalty because of the two claims he had made before the deadline. On 31 August 2006 RPA's customer relations unit wrote to Mr I, replying to his letters of 25 April, 3 May, 17 May and 12 July 2006. The letter acknowledged that some *preprinted* forms had been incorrect and apologised. It also said the mapping issues were resolved. The letter made no mention of the most recent action on Mr I's claim. He replied on 6 September 2006, saying that RPA had asked him to resubmit his 2006 claim form, which he had.

### **RPA change their view on Mr I's claim**

E273 From 21 September to 30 November 2006 RPA dealt with Mr I's 2006 SPS claim. On 30 November 2006 they told the scheme management unit (see glossary) that a RITA delivery expert had incorrectly said that RPA could accept his late claim and asked for advice. By this stage Mr I had twice written to RPA, on 28 September and 25 October 2006, asking about his claim. In mid-December 2006 the scheme management unit gave their verdict: the claim could not be accepted. They said nothing about possible mishandling by RPA.

E274 On 19 December 2006 RPA wrote to Mr I. They said that they could not accept his claim, because the deadline for that information had been 10 July 2006. They added that no SPS payments would be made for 2006 and any entitlements would be considered unused for that year.

E275 Mr I wrote to RPA on 3 January 2007, disputing their decision on his 2006 SPS claim. On 10 February 2007 they told him again, by letter, that they were unable to accept his

2006 claim. But on 19 February 2007 they paid him 50 per cent of it: £14,806.09. On 19 and 20 February 2007 Mr I wrote to RPA again. (On 2 March 2007 RPA sent Mr I copies of digital maps of his land. He told them that the maps looked correct.)

E276 On 14 March 2007 RPA's customer relations unit wrote to Mr I. They said they had reviewed Mr I's case but could only repeat that they were unable to accept his claim and that the entitlement statement they had sent him had been automatically generated '*as your claim had not gone through the entire rejection process*' and they had sent it to him in error. (RPA seem to have been unaware that they had also made Mr I a partial payment.) RPA apologised for the confusion that this had caused. They also told him that failing to activate his entitlements in 2006 meant that Mr I would lose the National Reserve top-up to all his entitlements, which would revert to normal entitlements in 2007. On 21 March 2007 RPA told Mr I that they had reviewed the facts of his case but had to uphold their original decision to reject his 2006 SPS claim.

### Mr I's Stage 1 appeal

E277 On 10 April 2007 Mr I sent RPA a detailed explanation of why he disagreed with their decision and on 13 April 2007 they received his Stage 1 appeal form. He described his difficulties in obtaining answers from RPA (although he called them Defra); their changed decision on accepting his claim; and their 50 per cent partial payment.

E278 We have seen exchanges between RPA staff, including an RPA lawyer, from August to November 2007 about Mr I's case. The debate was about the scope to pay his claim under

the 'obvious error' provisions and whether their own error in saying they would accept his claim meant he had expectation of payment. The RPA lawyer, on 9 October 2007, said he foresaw that the appeal panel could confuse eligibility for SPS with maladministration. He suggested thinking about clarifying what 'we' expected the panel to look at.

E279 At the end of October 2007 the RPA officer looking after the appeal requested further consideration of Mr I's case before she made the final decision. Her colleagues (one of whom had also considered the case in 2006) took the view that RPA had given Mr I opportunities to give them the information they needed. On 15 November 2007 RPA sent Mr I their Stage 1 appeal decision, which upheld their decision not to accept his 2006 claim as a valid claim.

### Mr I's Stage 2 appeal

E280 On 7 January 2008 Mr I appealed against RPA's Stage 1 decision. He said that RPA's appeal case summary omitted the many telephone calls in which he said officials had apologised for the organisation's poor performance and that his 2006 claim would be paid in full. He also explained the problems he had had in obtaining a final set of accurate maps.

E281 On 31 March 2008 RPA's appeal panel rejected Mr I's appeal. They said RPA's guidance was clear. To be able to lodge a claim, the area of land on which entitlements are to be activated must be filled in; the declaration must be signed and the form must be lodged with RPA within the required deadline. The appeals panel secretary submitted the panel's recommendation to the Minister on 15 April. On 21 April the Minister accepted the

recommendation and on 22 April 2008 RPA sent Mr I the Minister's decision.

E282 On 21 July 2008 the Member referred the complaint to me.

### **Mr I's description of the effect on him of losing the 2006 payment**

E283 Mr I has said that he was still uncertain what RPA have paid him and whether or not they have recovered the £14,800 they paid him by mistake for 2006. He puts the effect of his dealings with RPA as the loss of his 2006 subsidy, the reduced value of future entitlements and the trouble of dealing with RPA. He has said that dealing with RPA made him feel as though he was a criminal. Mr I has said he was fortunate enough to have other means, which meant he could pay his staff on time.

E284 RPA made some comments when we interviewed them about what happened in Mr I's case. This is a summary of what they said:

- RPA have said that dealing with an apparent dual claim from Mr I's landlord had caused some of the delay in Mr I's case during 2005.
- RPA have said that a written request for up-to-date maps would have produced a quick response and that Mr I should not have needed to go as far as writing to the Secretary of State to obtain up-to-date maps.
- RPA established, in response to our enquiries, that a field was missing from the preprinted claim form received by RPA on 10 May 2006 [...] and that another field [...] was preprinted but had the wrong

hectareage. The preprinting had inserted a figure of 2.13ha, which was the area of the missing field [...].

- RPA's view was that the information in RPA's letter to Mr I of 2 February 2006 would have been of use in filling in the 2006 claim form and that Mr I's understanding of RPA's systems was good enough for him to have been able to analyse the information they gave him.

### **Some comments from Mr I on a draft of this report**

E285 We shared a draft of this report with Mr I. In his comments on the draft, he said that he agreed with most of our reporting of the facts and was willing to accept our account on the small points where his recollection differed from what we had said. He asked for written clarification from RPA of how his SPS claim stood in terms of the National Reserve (paragraph E276).

# Glossary

Activation	Historic and hybrid
Appeals	IACS
Beds and Cambs Rural Support Network	Land use codes
Common Agricultural Policy (CAP), CAP reform	Modulation
Commons	National Farmers Union (NFU)
Countryside Stewardship Scheme	National Reserve
Cross compliance	Natural England
Disallowance	Obvious error
Disallowance working group	Overpayment
Drop-in centres	Partial payments
Dual claims	Paying agency
EAGGF	Penalties
ECR71	Reference period/amount
E-Calc	RPA Information Technology Application (RITA)
Entitlements	RITA delivery experts
Entry Level Stewardship (ELS)	Rural Land Register
European Commission (EC)	Rural Development Programme for England (RDPE)
European Council and the Council of Ministers	Scheme management unit
European Court of Auditors	Set-aside
European Union (EU)	Single Business Identifier (SBI)
Farm Advisory Service	Single Payment Scheme (SPS)
Farm Crisis Network	Special entitlements
Field data sheet	SP5 and SPV1
Forest Friendly Farming	Tenant Farmers Association
Fruit vegetable and potato	Validation
Grazing agreement	Whole case working

## Activation

Activating entitlements means claiming payment for the entitlements that a Single Payment Scheme claimant has established. The Rural Payments Agency (RPA) said that there was no validation error if entitlements were established but not activated. They concentrated on whether land had been established, rather than activated. However, towards the end of 2005 RPA realised that non-activation might be a problem. They did a 'sweep up' to check if it was obvious from the way a form was completed that a claimant had not activated field parcels in error. For example, a claimant might have ticked the activate box on the front of the claim form but not completed the activation column. That meant a claimant would have established entitlements, but not activated them. In the sweep up, RPA contacted people to ask 'are you sure this is what you wanted to do?'. They decided that these cases would get payment.

RPA first picked up the general issue of non-activation by claimants in the initial checks (Level 0 validation). They then decided to look for cases where the first activation box had been ticked but not column J (as that might indicate 'obvious error') and they then interrogated the system for cases fitting such criteria. They did not look for cases with nothing in either the initial box or in column J because they did not consider this to be an 'obvious error'.

In commenting on the draft report, the Department for Environment, Food and Rural Affairs (Defra) and RPA told us that they applied the 'obvious error' provisions in the governing EU Regulations to the maximum possible extent and that this enabled them to clarify the intent and, if relevant, allow activation, in some cases where the farmer had made errors on the application form. However, this could not apply in cases where there was no inconsistency on the form that would

allow the 'obvious error' provisions to be invoked. As a result, some farmers did not receive the payments they might otherwise have done.

## Appeals

RPA will reconsider decisions on entitlement if a claimant requests it. The first reconsideration will be done locally. The next step is for the claimant to appeal. A Stage 1 appeal is an administrative consideration. A Stage 2 appeal is considered by an appeal panel. The panel is made up of three members who are drawn from a pool of people appointed by Ministers on behalf of the Secretary of State in line with the *Code of Practice for Ministerial Appointments to Public Bodies*. Stage 2 is also an administrative consideration but requires payment of a £100 fee (refunded if the appeal is successful). The panel recommendation forms the basis of a submission made by Defra officials to the Minister, who makes the final decision. Single Payment Scheme claimants have no right of appeal to an independent statutory tribunal. Claimants can challenge the Minister's decision by asking the courts to permit a judicial review of the decision.

## Beds & Cambs Rural Support Network

A local charity that describes itself as part of a national network of support groups dedicated to combating stress and hardship in rural areas. It provides advice, practical help and personal support to people who live in the countryside.

## Common Agricultural Policy (CAP), CAP reform

The European Union's (EU's) Common Agricultural Policy (CAP) provides financial support to farmers for a range of farming, environmental and rural development activities as well as managing EU agricultural markets. After the Second World War, the CAP succeeded in improving EU's food self-sufficiency but also led to some problems, such as regular and large food surpluses in certain

farm products. The first CAP regulations for a single market for agricultural products were in 1962.

The MacSharry reforms, agreed in 1992, switched the bulk of CAP support from market support measures to annual payments (collectively known as direct payments) to farmers. Alongside the introduction of direct payments, a new control system (see IACS) was introduced. In 2003 the EU member states agreed further CAP reform. The reformed system continues to make direct payments to farmers, intended to give them income stability. However, the payments are no longer linked to how much farmers produce and the conditions of payment include rules on environmental conditions and animal health and welfare standards (see cross compliance).

Member states expect the next stage of major CAP reform to take place in 2013.

### Commons

Commons are about rights of use rather than land area. This made it complex for RPA and for claimants to deal with commons in the implementation of the area-based Single Payment Scheme subsidy payments. Defra estimate that about 3 per cent of land in England is common land. That excludes areas such as the New Forest or Epping Forest. People can have rights of common on common land. The rights can, for example, give the right to graze stock, to fish or to remove peat for burning. In the 1960s, legislation attempted to set up definitive registers of common land, which would record rights of commons. However, these registers are known to contain errors and omissions. The *Commons*

*Act 2006* included measures to improve the registration system.

### Countryside Stewardship Scheme

Countryside Stewardship started in England in 1991. The Environmental Stewardship Scheme replaced it and Countryside Stewardship has closed, although some existing agreements will continue until 2014.

### Cross compliance

Farmers are required to comply with a set of *Statutory Management Requirements* (SMRs – specific Articles of 19 existing EU Directives and Regulations) and to keep their land in Good Agricultural and Environmental Condition (GAEC) as set out in guidance supplied by RPA. This is a condition of claiming direct payments, including the Single Payment Scheme. The SMRs are about public, animal and plant health, environmental conditions and animal welfare. GAEC standards cover, among other things, soil erosion, soil structure, minimum levels of maintenance and protecting habitats.

### Disallowance

A financial correction of money that a member state has to repay to the European Commission where the member state has not properly implemented the stated regulatory controls. It can take several years for the European Commission and a member state to finalise a given year's disallowance figure. The December 2009 *RPA Disallowance Report* said RPA had a proposed disallowance figure for the Single Payment Scheme of £214.4m, covering the Single Payment Scheme years 2005 to 2008 inclusive.<sup>108</sup>

<sup>108</sup> Source: p71 of The 2013 Review of the Rural Payments Agency Report of Workstream 2 – Operations, completed for Defra in March 2010 and published in July 2010 by Defra.

The different bodies auditing RPA are:

- RPA's internal audit team;
- The National Audit Office (NAO) external audit for RPA (for reporting to HM Treasury);
- The NAO value for money studies for the Cabinet Office;
- The NAO acting as the Certifying Body completing a financial clearance audit on behalf of the European Commission;
- The European Commission auditors completing a conformity audit (this may lead to exclusion of expenditure from EU funding);
- European Court of Auditors (ECA) external audit for the European Commission.

The European Commission may apply disallowance as a flat rate financial correction across all claim expenditure in the form of a set percentage reduction depending on the severity of the control weakness. Where this is a possibility, it is in RPA's interest to ring-fence the cases related to the particular weakness or failing.

### Disallowance Working Group

RPA have told us that a Defra Disallowance Working Group meets every six to eight weeks, chaired by Defra's director of finance. The group has representatives from Defra, RPA and HM Treasury. Issues of interest to the group are ones that pose a potential financial correction/disallowance; could impact on policy decisions; pose risks to RPA's accredited status and ability to act as the paying agency; or could result in EU criticism and damage to RPA's reputation.

### Drop-in centres

Drop-in centres are a facility that RPA offer farmers around the deadline for submitting SPS claims. Farmers can hand-deliver their claims.

RPA and their predecessor bodies had a long-standing system for accepting hand-delivered CAP subsidy claim forms from farmers. In December 2001 the RPA operations director summed up the practice for the Minister at the time. His memo said:

*'Traditionally farmers have been used to calling in at their local [RPA] office to deliver claim forms or seek advice. This practice is far more pronounced where offices are in rural areas, e.g. Worcester and Exeter than say Bristol or Reading.'*

He explained that in the two week lead-up to the IACS deadline of 15 May, RPA could find that up to a third of forms were hand-delivered. He said:

*'Since the introduction of IACS in 1993 most offices have also provided some form of well publicised receipt clinics, either at the office itself or in suitable locations throughout the area, e.g. livestock markets, village halls etc.'*

RPA's aim, expressed at a 30 January 2002 meeting with the Minister, was to continue to provide a facility for dropping off claim forms in person, *'but the service [personal visitors] will receive will be limited to a basic check of their form and the issue of an acknowledgement'*.

From 2001 to 2002 RPA started moving from handling claims at nine local offices (regional service centres) to handling them at a smaller number of offices, with no geographical link between the claimant and the place of processing. RPA's telephone-based customer service centre

opened in February 2005. RPA wanted it to be farmers' main route to finding information instead of the processing offices that remained. In commenting on the factual accuracy of a draft of this report, Defra and RPA gave us this description of what happened at their drop-in centres in and before 2005.

*'The staff involved complete a basic check on the claims to ensure that there are entries in all the relevant parts of the form that are required for an eligible claim. But that does not extend to ensuring the farmer has maximised his potential claim. Checks to ensure that the entries made are correct are only taken at a later stage of processing. The service provided in 2005 at drop-in centres was broadly the same as in previous years, both in terms of the number of sites and level of checks undertaken.'*

The evidence we have seen from some of the complaints put to me is that some farmers did expect and could obtain more detailed personal information on their claim forms up to 2004.

In commenting on the factual accuracy of a draft of this report, Defra and RPA also gave us this extract from page 23 of the policy update they issued in February 2005.

*'If you return the form to us by post, we will send an acknowledgement postcard to let you know we've received it. You can still take your completed form to your local RPA office and ask them to pass it on to us, but bear in mind staff will only be able to give your form a very basic check. You should not rely on them to make sure you have completed it correctly.'*

During our investigation, RPA officers explained to us that the level of checking in drop-in centres

had dropped through the 1990s and into the new century. In 2010 there was a huge change to what RPA did at drop-in centres to get complete and accurate data. They put electronic capability into the drop-in centres and this was well-publicised. They also extended the scope of the checks staff carried out at drop-in centres. RPA also noted that they had to be careful about the amount of guidance they gave, because of the risk that claimants would say that they had been misdirected. (See also paragraphs A4 and 146 and the Defra Permanent Secretary's comments at paragraph 147.)

### Dual claims

A dual claim is a form of overdeclaration. It is where two Single Payment Scheme claimants seek either to establish entitlements on the same area of land (in 2005 only) or to activate entitlements on the same area of land. One of them will be treated as making an overdeclaration and, depending on the amount of land affected and its proportion to the farmer's total Single Payment Scheme claim, may have to pay a penalty. RPA have told us that, for them, the communication between landlords and tenants was of particular interest in 2005. That was because 2005 was the first year in which landlords and tenants needed to decide who would claim. There had been no need to worry about land disputes between landlords and tenants until the Single Payment Scheme, because the previous subsidy payments had been based on production not land area. RPA have told us that the Single Payment Scheme meant there was an incentive for both parties to establish the capital asset in the form of the entitlements against which payment claims could be made. That introduced a new dynamic into the traditional landlord/tenant discussions on the rights and responsibilities each had in relation to direct payments.



## EAGGF

The European Agricultural Guidance and Guarantee Fund, set up in 1962, is the funding source for CAP schemes, including the Single Payment Scheme.

## ECR71

ECR71 is 'Emergency change request 71'. RPA have told us that they found that their 'high volume data capture' work in 2005 (keying in the information on the Single Payment Scheme claims) had not picked up all fields. A lower than actual number of field parcels captured could mean a lower number of entitlements issued overall, with a related inflation in value. ECR71 was a means to allow RPA to correct the number of entitlements that had been allocated.

## E-Calc

RPA built a system called the entitlement calculator to give them historical data about what a farmer had claimed in 2000, 2001 and 2002. It became known as E-Calc. Data items from the pre-Single Payment Scheme schemes, as required by the Regulations, were fed into E-Calc in April 2004. To ensure accuracy, RPA sent information statements to every farmer detailing all the information they held and asking the farmer to get in touch if any information was incorrect. In October 2005 RPA migrated the information from E-Calc into RITA and E-Calc has been static since that time.

## Entitlements

In the Single Payment Scheme, an entitlement is the right to a Single Payment Scheme payment. A definitive entitlement is the basis for future claims and is an asset that can be traded or used to secure loans. There were initially different types of entitlements in England: normal entitlements,

set-aside entitlements, national reserve entitlements, special entitlements and authorised entitlements for fruit vegetable and potato (FVP) growers.

In 2005 farmers had to establish the right to an entitlement before they could activate the entitlement for 2005 and following years. By activating, RPA meant claiming payment. Farmers could establish entitlements and have good reason not to activate them. RPA's example of a reason for non-activation was that some farmers might not have the land at their disposal for the 10-month period needed to qualify for payment.

Farmers in England experienced delays in being told their definitive entitlements by RPA because the Agency's systems problems had slowed down their validation of Single Payment Scheme claims. In cases where RPA had been unable to complete their validation checks, they sent farmers provisional or non-validated entitlement statements.

## Entry Level Stewardship (ELS)

One of the environmental stewardship schemes funded by the EU. Entry Level Stewardship requires a basic level of environmental management. A sister scheme is Organic Entry Level Stewardship. In 2005 the scheme was managed by the Rural Development Service, which is now part of Natural England. Natural England administer the schemes, using mapping data provided by RPA's Rural Land Register. RPA apply controls and make the payments to the scheme claimants. See Rural Development Programme for England (RDPE).

## European Commission

The European Commission is the executive body of the European Union (EU). The body is responsible for proposing legislation, implementing decisions, upholding the EU's

treaties and the general day-to-day running of the EU.

The Commission is accountable to the European Parliament and operates as a cabinet government, with 27 Commissioners. There is one Commissioner per member state, although Commissioners are bound to represent the interests of the EU as a whole rather than their home state. The term 'Commission' can mean either the 27 Commissioners themselves (known as the College of Commissioners or College), or the larger institution that also includes the administrative body of about 25,000 European civil servants who are divided into two departments called Directorate-General and Services.

### **European Council and the Council of Ministers**

The European Council is the meeting of the heads of the EU member states, its president and the European Commission president. These meetings happen about four times a year.

The Council of Ministers is one of the EU's decision making and legislating bodies. Meetings of the Council of Ministers are based around policy areas (such as Agriculture and Fisheries) and have a relevant ministerial representative from each member state.

This report refers to Council Regulations and Commission Regulations because the Council of Ministers and the European Commission each have law making powers. The Commission's powers are delegated to it by the Council, and Commission regulations are generally the more detailed laws needed to implement legislation passed by the Council.

The Council of Europe is a different body.

### **European Court of Auditors**

The European Court of Auditors (ECA), which has about 900 staff, is an independent audit institution that examines whether EU revenue and expenditure is raised and spent in accordance with Regulations. It has the right to audit any person or organisation handling EU funds and it reports to the European Council and the European Parliament.

### **European Union (EU)**

The European Union (EU) is an economic and political union of 27 member states. The EU traces its origins from the European Coal and Steel Community (ECSC) and the European Economic Community (EEC) formed by 6 countries (Belgium, France, Germany, Italy, Luxembourg and the Netherlands) in 1958. In the intervening years the EU has grown in size by the accession of the following new member states:

1973: Denmark, Republic of Ireland and United Kingdom

1981: Greece

1986: Portugal and Spain

1995: Austria, Finland and Sweden

2004: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia

2007: Bulgaria and Romania.

The EU puts the population of farmers in the 27 member states at 13 million. (Note that the European Community (EC), which replaced the European Economic Community, is one part of the structure called the EU. This report refers to 'EU legislation', for the sake of better understanding. The strictly correct term would be 'EC legislation'.)

### **Farm Advisory Service (FAS)**

A service, provided for by the CAP reforms, to help farmers make their plans for meeting the new cross compliance conditions. In England it started work in 2007.

### **Farm Crisis Network**

A UK network of groups of volunteers drawn from the farming community and rural churches. The network describes its volunteers as being there to 'walk with' and support farming people and families as they seek to resolve their problems, whatever these may be.

### **Field data sheet**

Part of the SP5 claim form for the Single Payment Scheme. It asks for specific information about the applicants' individual fields.

### **Forest Friendly Farming**

Forest Friendly Farming was set up in 2001 by the New Forest Committee. It described its purpose as being to develop practical ways of supporting farming, commoning and woodland management in the New Forest. The project ended in September 2008.

### **Fruit vegetable and potato (FVP)**

In 2005 the Single Payment Scheme rules also provided for authorised entitlements for fruit, vegetable and potato growers. Payments for fruit, vegetable and potato crops (FVPs) were new under the Single Payment Scheme. RPA's *2005 Single Payment Scheme Handbook* explained that farmers could establish entitlements on land growing FVPs in the same way they could on other land eligible for payment. However, farmers needed to apply for 'authorised entitlements' in order to activate their FVP entitlements. RPA said they

would allocate these 'authorised entitlements' based on information in Single Payment Scheme claims about FVP produced in 2003 and 2004 and planned for 2005. The FVP scheme no longer exists.

### **Grazing agreement**

This agreement enables a land owner to grant a third party the right to use a piece of land for the purpose of grazing sheep or other animals.

### **Historic and hybrid**

The 2003 reforms gave member states the option of implementing different models of the Single Payment Scheme. The default option provided for entitlements to be based on the value of historic direct payment receipts and the land that gave rise to them. Most member states and Scotland and Wales adopted that option. Hybrid models were also allowed. Under these, the number of entitlements was allocated on the basis of land claimed in the first year of the Scheme. The value of the entitlements was determined by a combination of a flat rate per hectare in the member state or region concerned and individual historic direct payment receipts. If the combination was maintained at the same level over subsequent years, this was termed a static hybrid, as adopted in Northern Ireland. But if the combination changed, this was termed a 'dynamic hybrid' as adopted in England. In 2005 10 per cent of the total available for payment was a flat-rate payment and the rest was based on farmers' history of subsidy payments before the Single Payment Scheme. By 2012 100 per cent of the payment will be flat-rate. RPA reached the historic element by calculating a reference amount for each farmer, based on his or her subsidy payments in 2000, 2001 and 2002.

The rest of the United Kingdom, and most other EU member states, decided to base Single Payment Scheme payments on a simpler approach.<sup>109</sup>

### **Integrated Administration and Control System (IACS)**

The 1990s reform of the CAP introduced the Integrated Administration and Control System (IACS).<sup>110</sup> It required each field, or group of fields, to have a unique identification code and all animals to be identified and recorded. It set up an inspection system for checking that farmers' claims were correct and instigated penalties for inaccurate claims. It also established what must be included in application forms, as well as the checks that must be completed by paying agencies, both by computerised means and by on-farm inspections. It gives a detailed penalty regime where over-claims are identified. A parallel set of finance regulations provides for penalties or 'disallowance' for member states where audits reveal inadequate controls by the state's paying agencies. However, 'IACS' is also used generally to refer to the range of subsidy schemes in place before the Single Payment Scheme.

### **Land use codes**

In Single Payment Scheme claims, the land use codes identify the claimant's use of each field parcel, for example, crop or permanent pasture in particular years. The land use codes that RPA issue for use by farmers may change from year to year depending on changing EU regulatory requirements. For example, separate codes for particular energy crops were dropped when the separate energy aid scheme was abolished in 2009.

### **Modulation**

Modulation is a proportion of Single Payment Scheme payments that is deducted to fund other agricultural and environmental support. Farmers then receive a partial refund of this 'modulation' deduction.

### **National Farmers Union (NFU)**

A trade association that represents farmers in the United Kingdom and also provides professional representation and services to its farmer and grower members.

### **National Reserve**

Under the Single Payment Scheme, member states had to set up a fund called the National Reserve. Its purpose was to support farmers whose business changed during or after the reference period and who, because of that, had a lower historic element in their Single Payment Scheme entitlements than their actual production capacity could justify. The National Reserve gave these farmers an opportunity to obtain an increased reference amount. Any increase applies to the historic element of their established entitlements. RPA also made allocations from the National Reserve to claimants who were not claiming subsidy before the SPS and who qualified as new entrants to farming. Entitlements that are unused for three years (from 2009, reduced to two years) are transferred to the National Reserve.

### **Natural England**

A public body linked to Defra. They describe their purpose as protecting and improving England's

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<sup>109</sup> Paragraph 9, House of Commons Committee of Public Accounts: *The Delays in Administering the 2005 Single Payment Scheme in England*, published September 2007.

<sup>110</sup> Paragraph 1, House of Commons Select Committee on Agriculture report: *The Implementation of IACS in the European Union*, published in 2001.

natural environment; and encouraging people to enjoy and get involved in their surroundings. They are the government's adviser on the natural environment. Natural England was created in 2006 from several parts of Defra, including the Rural Development Service, which looked after environmental stewardship schemes such as Entry Level Stewardship.

### **'Obvious error'**

'Obvious error' forms part of the regulatory control rules (see IACS) that apply to the Single Payment Scheme and other direct payments. It allows paying agencies to correct some errors on claim forms as long as they are obvious from the claim form itself. This can ensure farmers avoid reductions and penalties that would otherwise apply to their claims. A claim form may be obviously incorrect, but fail to come within the scope of the 'obvious error' regulations, because, for example, it is not obvious what the 'correct' entry would be.

### **Overpayment**

By the end of March 2009 RPA had recovered about £25m that had been overpaid, according to their *2008-09 Annual Report*. The Report also said that RPA had underestimated the complexity connected with Single Payment Scheme rules, multiple years and the effects of corrective work. RPA estimated the overpayment debt was £22m, or about 0.05 per cent of the fund value for the 2005-07 Single Payment Scheme years. They said they wanted to confirm the amount of the debt before they asked farmers to repay it. The National Audit Office, RPA's auditor, said they could not obtain sufficient assurance from RPA's records to be sure that the debtors were accurately stated in 2008-09. The NAO said: *'Our testing found indicative error rates of 79 per cent in uninvoiced debts and error rates of 9 per cent in respect of*

*amounts which had already been invoiced to farmers.'*

### **Partial payments**

RPA have told us that in 2005 and 2006, they had the scope to make Single Payment Scheme part payments to farmers if they expected to be unable to pay Single Payment Scheme claims in full within their timetable. They could reclaim the money from farmers if, when claim processing was complete, the part payment proved to have been an overpayment. For 2005 Single Payment Scheme claims, RPA made partial payments of 80 per cent to most farmers in May 2006. For any 2006 Single Payment Scheme claims that they could not pay in full, they made partial payments of 50 per cent or more in February 2007.

### **Paying agency**

Paying agencies are accredited agencies or bodies in the member state that make payments on behalf of the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD). In England the RPA were accredited as the paying agency in 2001. Since 2005 they have been responsible for making the Single Payment Scheme payments.

The Competent Authority is the body of the member state that has the powers to issue and withdraw the accreditation of paying agencies. In the UK, the Competent Authority comprises the four agricultural ministers. In England the agricultural minister is the Secretary of State for Environment, Food and Rural Affairs.

Co-ordinating Bodies are required where member states have more than one paying agency, as in the UK. They are charged with bringing together information to be sent to the Commission and promoting the harmonised application of European Community rules when more than one

paying agency has been accredited in a member state. In the UK the Co-ordinating Body also acts as the Secretariat to the Competent Authority.

### Penalties

The Single Payment Scheme Regulations impose 'reductions and exclusions' on farmers' claims where there has been a breach of the Regulations. For example, the Regulations provide that claims submitted after the deadline for claims shall be reduced by a given percentage or excluded from the Single Payment Scheme altogether. (The reduction depends on how late the claim is submitted.) The Regulations also provide for a set formula for reductions to farmers' claims where they have made an overdeclaration of eligible land. That might be, for example, if they have claimed on land that they were not farming within the terms of the Single Payment Scheme. RPA will also reduce claims if the farmer fails to meet the requirements of the Regulations on cross compliance.

### Reference period/amount

RPA used farmers' subsidy payments in 2000, 2001 and 2002 as the basis for calculating the historic element of their Single Payment Scheme entitlements. In 2004 RPA sent farmers the figures for the amount of land and animals that they had used for the calculation in an information statement. They invited farmers to contact them if they disagreed with the figures or believed they had reasons for RPA to use a different period to calculate the historic element. Farmers whose pre-Single Payment Scheme subsidy payments had been unusually low in 2000-02 for reasons outside their control could ask RPA to base their historic figure on different years.

### RPA Information Technology Application (RITA)

RITA is RPA's largest computer system. It processes claims and calculates the value of Single Payment Scheme payments. RPA found that RITA failed to perform as needed when they implemented the Single Payment Scheme in 2005. RPA reviewed their computer systems and upgraded them. Despite the changes made, the National Audit Office commented in October 2009 that RPA's software is complex and is expensive to maintain. It also commented in October 2009 on the continuing uncertainty about the accuracy of the data.<sup>111</sup>

### RITA delivery experts

RPA nominated some operations staff to be delivery experts, that is, expert users of RITA. These people were also processors' first stop in resolving queries about the correct application of the Single Payment Scheme guidance and regulations. If a delivery expert was unable to answer a query, generally he or she would refer it to the scheme management unit.

### Rural Land Register

RPA run the Rural Land Register, which holds digitised maps of all registered land parcels. Land must be on the Register in order to qualify for payments under the Single Payment Scheme or one of the environmental stewardship schemes run by Natural England. The work to create the Register entailed taking a picture of the land, marking the boundaries and converting this to digital data. RPA's deadline for completing the Register was April 2004, but it went live in September 2004. In 2004 to 2005 landowners applied to register land using the IACS 22 form.

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<sup>111</sup> A Second Progress Update on the Administration of the Single Payment Scheme by the Rural Payments Agency, published by the National Audit Office October 2009.

RPA were unable to deal with the 1,000 per cent increase in the number of claims made in readiness for the Single Payment Scheme.<sup>112</sup>

RPA based the first version of the Rural Land Register on data from the 2001 Ordnance Survey Master Map. They had contracted out the work to digitise the field mapping data, but brought the digitisation work back in-house in late April 2006, with the aim of working faster. In RPA's *2005-06 Annual Report*, the chief executive noted the risk that the quality of data from the Rural Land Register could affect RPA's ability to make payments for the 2006 scheme year. He said RPA had set up methods of consulting better with customers to ensure the data they held was correct. The number of requests for mapping changes fell in the second year of the Single Payment Scheme, but RPA remained cautious about implementing updates to the Register to include more recent Ordnance Survey data. As late as 2007-08, RPA found that data quality and accuracy problems continued to affect the base information they held – in their Customer Register and Entitlements Databases as well as on the Rural Land Register. In 2009 they started updating the maps. Farmers reported further mapping problems in 2009 and 2010.

### **Rural Development Programme for England (RDPE)**

The RDPE funding schemes included the environmental stewardship schemes administered by Natural England. Defra is responsible for RDPE, and RPA is the paying agency. However, other bodies, such as Natural England, handle most of the practical work. Regional Development Agencies also administer(ed) some claims covered by RDPE funding.

### **Scheme management unit**

Each of the subsidy schemes administered by RPA has a scheme management unit. The Single Payment Scheme scheme management unit is based in Northallerton and works on Single Payment Scheme policy and audit liaison, as well as developing operational processes. Among other things, it will provide an opinion on how individual cases meet the requirements of Single Payment Scheme legislation and policy. However, other parts of RPA also have a say in, or some responsibility for, these aspects of the Single Payment Scheme.

### **Set-aside**

Set-aside is a longstanding EU market management measure. Arable farmers who receive direct payments are required to move a percentage of their land out of production. Until the policy was abolished in 2009, it operated through the Single Payment Scheme by arable farmers being allocated specific set-aside entitlements. Farmers had to claim these entitlements before any others they held. They also had to keep the hectares matching the number of entitlements out of production.

### **Single Business Identifier (SBI)**

RPA give farmers unique reference numbers known as Single Business Identifiers. Some farmers involved in separate businesses may have a different SBI for each business.

### **Single Payment Scheme (abbreviated to SPS in the body of the report)**

Introduced by the EU as part of the 2003 Common Agricultural Policy reforms that replaced 11 separate crop and livestock based production

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<sup>112</sup> See the House of Commons Environment, Food and Rural Affairs Select Committee report of March 2007: *The Rural Payments Agency and the implementation of the Single Payment Scheme*.

subsidies with a single payment based on land area. *EC Council Regulation 1782/2003* set out the Single Payment Scheme, giving 1 January 2005 as the earliest date for implementation. In January 2004<sup>113</sup> Defra explained that the main elements of the reform proposals that had led to the Single Payment Scheme included: *'breaking the link between farm subsidies and production by "decoupling" direct subsidies to agriculture'* and *'cross compliance to make subsidies dependent on meeting standards in key areas like environment, and animal health and welfare, underpinned by a new Farm Advisory System'*.

RPA's *Single Payment Scheme Information Statement Explanatory Guide for England*, published in July 2004, set out the practicalities of the Single Payment Scheme for farmers.

- The Single Payment Scheme would replace most crop and livestock payments from 1 January 2005.
- Farmers had previously received payments for growing an area of crops or keeping a number of animals. Under the Single Payment Scheme they would need to show they were keeping their land in 'good agricultural and environmental condition'. This would be called cross compliance.
- The size of farmers' payments would depend on the number of entitlements they held.
- Farmers (people *'carrying out an agricultural activity'*, including keeping the land in *'good agricultural and environmental condition'*) could apply for entitlements in 2005. They could activate their entitlements, and so receive a payment against them, in 2005 and every following

year of the Single Payment Scheme by declaring a matching eligible hectare on their application form. Most farmers would have set-aside entitlements (land not under cultivation in a given period) and they would need to activate those before other entitlements.

- In England the Single Payment Scheme would change gradually to a flat-rate payment over eight years. In 2005 10 per cent of the total available for payment would be made in flat-rate payments. By 2012 100 per cent of the payment would be flat-rate.
- Before 2012, the rest of the payment would be based on entitlements calculated from individual farmers' subsidy history. RPA would do this by calculating a reference amount for each farmer, based on his or her subsidy payments in 2000, 2001 and 2002.
- Farmers who had no subsidy history would receive only the flat-rate payment under the Single Payment Scheme, but could apply to the National Reserve.
- The National Reserve would be funded by a deduction from the amounts available for payment. RPA would also deduct money for what they called modulation. These modulation deductions would fund agri-environment measures.
- Payments would be set at a different rate for three regions: moorland within the upland severely disadvantaged area; the rest of the upland severely disadvantaged area; and land outside the severely disadvantaged area.

<sup>113</sup> In a memorandum to the House of Commons Environment, Food and Rural Affairs Committee.



- For each region, RPA would set the final value of the flat-rate payment by taking the total amount available for payment and dividing it by the number of eligible hectares declared by farmers in the region in 2005.

### Special entitlements

Farmers could establish 'special entitlements' in 2005 if their pre-Single Payment Scheme entitlement to agricultural subsidy had been based on having livestock, with little or no land. They might have no land in 2005 or a very small area of land. The 2005 Single Payment Handbook explained that payment for normal entitlements depended on the farmer having enough eligible hectares at his or her disposal. With special entitlements, payment depended on the farmer meeting certain conditions about the number of livestock he or she had on his or her holding in the year of the claim. Some farmers with little or no land could be disadvantaged by the Single Payment Scheme's €5,000 ceiling on the unit value of entitlements if they claimed only normal entitlements. Special entitlements gave farmers a way to avoid this.

### SP5

The SP5 form is RPA's Single Payment Scheme claim form. The two parts of the form that were particularly relevant to this investigation were SP5a, where claimants answered questions about what they wanted to claim, and Annex 5b, which was the field data sheet(s) where they recorded their individual land parcels. In 2005 claimants needed to tell RPA:

- whether or not they wanted to establish entitlements for their land under the Single Payment Scheme; and

- whether or not they wanted to activate those entitlements.

They would need to activate their entitlements each year if they wanted to receive payment for that year. But they had only one chance, in 2005, to establish entitlements.

In 2005 question 3 of SP5a asked applicants to confirm whether or not ('yes' or 'no') they were applying to activate entitlements to areas that they had entered in column J of the field data sheet.

In 2005 column J of the field data sheet(s) was headed '*area for which entitlements to be activated (ha) (i.e. land which meets 10 month period on the form)*'. Making no entry in column J meant a claimant would receive no payment for 2005.

In 2005 question 5 of SP5a asked for the date from which the land would be at the farmer's disposal for a continuous period of 10 months. It said:

*'The start date for having land at your disposal must be between 1 October 2004 and 30 April 2005. If **you** do not complete this we will assume that the 10 month period for having land at your disposal will start on 1 February 2005.'*

In 2006, and in later years, RPA revised and improved the SP5 form.

### SPV1

The SPV1 is a standard letter used by RPA to tell Single Payment Scheme claimants about omissions in or possible problems with the information they have provided in their SP5 claim forms. RPA guidance to staff determines what problems in claim forms will require an SPV1 letter.

## Tenant Farmers Association

An association formed in 1981 by a group of farmers who felt that their interests were not being forcefully represented by existing bodies. It describes itself as the only organisation dedicated to the tenanted agricultural sector.

## Validation

### Level 0 validation

RPA have told us that in 2005 the initial checks (Level 0 validation) were a manual check in which they made sure they had the minimum amount of data to enable a claim to be lodged under the EU Regulations. This meant checking that the name, address and the minimum amount of claim data were completed. When RPA did these checks, they had sight of the whole form. They have refined the checks over the years.

In 2005 RPA could not scan the claim forms 'intelligently', which means scanning the data into the computer processing system. They had to do 'high volume data capture' (HVDC), which meant keying in the information in the claim forms. They have said there were HVDC quality checks that checked the keying.

In 2006 the SPS claim form had two key parts concerned with activation data: 'part C' and 'part E'. We asked Defra and RPA about how they handled claims where part E was blank. They told us that their guidance for staff was to send an 'SPV1' letter asking for the missing information. They said that, in principle, in 2006 problems with the information (or lack of information) in part E did not disadvantage claimants. That was because RPA had decided to base 2006 SPS payments on the land area activated in part C of the application form even if that was not supported by the entries in part E. Defra and RPA also said that they based

payments on the entitlements claimants had activated in part C.

### Level 1 validation

Level 1 validation was about checking the field size and identifying missing information or the use of invalid land use codes. RITA did the Level 1 validation checks and produced error lists of validation failures on individual claims. Staff would then go through individual claims screen by screen, correcting the errors identified on the lists. RPA told us that they checked that all appropriate boxes in the form were complete. For example, in 2005 there would be a red error message if the activation box had not been completed.

### Level 2 validation

Level 2 validation could not start until most claims had completed Level 1. Level 2 checked the land claimed against the Rural Land Register; checked whether the land had been digitised; and checked for dual claims. If the land was to be digitised, the task would go to the mapping team.

## Whole case working

In 2006 RPA started the move to 'whole case working'. At first they referred to 'SBI working', which replaced the task-based (also known as the workflow-based) approach of a processor taking the next task in the queue regardless of which claim it was. They have told us that they very quickly realised that task-based working meant that 10 people could be writing to the same farmer. SBI working meant organising all the tasks by SBI number as far as possible. This approach evolved into whole case working, with RPA changing the computer systems throughout 2006 until a software release in April 2008 gave caseworkers reasonably easy access to all the

details of an individual claim. Later software releases developed this.

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