

PLANNING APPEALS COMMISSION AND WATER APPEALS COMMISSION

INDEPENDENT COMPLAINTS AUDIT PANEL REPORT

2023/2024

INTRODUCTION

1. This is the report of the Planning Appeals Commission and Water Appeals Commission (“the Commission”) Independent Complaints Audit Panel for the year 2023/24.
2. The Commission is an independent statutory body with responsibility for determining planning and water appeals. It has a published complaints policy which defines a complaint as “*any expression of dissatisfaction by any party involved in an appeal or examination/enquiry/hearing*”. It also identifies a “*justified complaint*” as one where there is substance in the allegation made by the complainant. The policy is non-statutory and makes provision for an Independent Complaints Audit Panel to conduct an annual audit of the Commission’s handling of complaints. The Panel comprises 2 individuals appointed respectively by the Royal Town Planning Institute (Northern Ireland) and the Bar Council of Northern Ireland. The Panel members are required to have an understanding of the Northern Ireland planning process and may not be former members of the Commission.
3. We confirm that both members of the Panel have been nominated by our respective professional bodies and satisfy the published criteria for nomination. This report represents the joint view of both Panel members. The Commission’s complaints procedure is published on its website and comprises the following key elements:-
 - a) Complaints should be made within 6 months of the date of a decision. b) Complaints will be acknowledged within 7 working days of receipt and a full response will normally be issued within 4 weeks of receipt. If a complaint is received in relation to a matter still under consideration by the Commission, the complaint will be addressed once the decision has been issued. If a response is not possible within these time frames, the individuals will be advised of the likely response time.
 - c) All complaints are investigated by either the Chief Commissioner, Deputy Commissioner or, if appropriate, a member of senior administration staff who was not involved in the appeal.

- d) Responses to complaints are given in writing and should explain the outcome.
- e) Following investigation, a complaint will receive a finding of either “justified” or “not justified”. A complaint will be justified if it is considered that “there is substance in the allegation made by the complainant.”
- f) The Commission has no power to change or vary its decisions, once issued. Where a complaint relates to the reasoning or outcome of an appeal, the decision may not be varied via the complaints procedure. If an error is identified, an apology should be issued, if appropriate.
- g) If a legal challenge is initiated in parallel with a complaint, the issue will be addressed through the legal process.

OVERVIEW OF COMPLAINT AUDIT PROCESS

- 4. The Commission received 8 complaints during 2023/24. In one additional case, an individual contacted the Commission and indicated an intention to make a complaint. The Commission provided the individual with a copy of the complaints process and allocated a complaint reference. However, no complaint was ultimately received.
- 5. In one complaint, a member of the Panel had a professional involvement with the issue which appeared to be related to the subject matter of the underlying appeal, but not with the complaint itself. The Panel member declared this interest and the complaint was reviewed by the other Panel member. The complaint was later discussed by both Panel members at which point it became clear that no conflict of interest arose which prevented joint consideration of the complaint.
- 6. In relation to all 8 complaints, the entire complaint file was reviewed separately by one member of the Panel and later discussed by both members, with agreement on the outcome of the audit. In all cases the underlying appeal file was also made available to both Panel members for inspection. We also discussed our preliminary findings with the Chief Commissioner and administrative staff.
- 7. The assistance provided by the Commission was exemplary. We received full co-operation and were provided with all information requested. We also received a very helpful briefing on how recommendations from previous years had been considered and implemented.

8. We decided for ourselves the review methodology. Following discussion we agreed to follow the same procedure as in previous years and reviewed all complaints against each of the following areas:-
1. Subject matter of the complaint;
 2. Compliance with published time frames for response;
 3. Compliance with other aspects of complaints procedure;
 4. Substance of complaint decision;
 5. Complaint outcome.

FINDINGS

(i) Subject matter of complaint

9. We divided complaints into 3 broad areas, depending upon the nature and subject matter of the complaint: administration/commission procedures; conduct of appeal and Substance of decision. Some complaints raised more than one issue and were recorded accordingly. The breakdown of the subject matter of complaints was as follows:-

Administration/Commission procedures 5

Conduct of appeal 2

Substance of the Commission decision 3

(ii) Response Timeframe

10. During 2023/24, the Commission's compliance with the guideline timeframes for both acknowledging complaints and responding to complaints was exemplary. Our findings were as follows:-

1) **Acknowledgment.** All complaints were acknowledged within the guideline period of 7 working days.

2) **Substantive response.** The guideline period of 4 weeks for a substantive response was observed in 7 out of 8 cases. In one case a response was made after 5 weeks. The subject matter of the complaint related to the delay in assigning a Commissioner to the appeal. The response explained the updated position and no prejudice was experienced by reason of the very minor delay in responding to the complaint.

3) **Holding response.** There was no requirement for a holding response in any of the complaints received during 2023/24.

(iii) Compliance with Complaint Procedure

11. We examined compliance with the published complaints procedure (other than the response times) and found that the Commission complied with its procedures in every case. We found that in each case, the complaint was investigated by either the Chief Commissioner or Deputy Chief Commissioner or a member of the senior administrative staff. In cases which had been assigned to senior administrative staff, the subject matter of the complaint related to generally applicable Commission procedures, rather than the conduct of an appeal or the substance of an appeal decision. We considered this to be appropriate. In all of the complaints which related to either the Commissioner's conduct of the appeal or the substance of the Commissioner's decision, the complaint was reviewed by either the Chief Commissioner or Deputy Chief Commissioner. Once again, we considered this to be appropriate.

12. In each case the complainant was provided with a full and reasoned response in writing which also communicated whether the complaint was justified or not justified. In cases where the complaint related to the subject matter of the underlying decision, the response contained an appropriate explanation of the decision, along with an explanation of the Commission's inability to vary a decision, through the complaints process. The Commission also explained that the appropriate remedy for challenge to the substance of the decision was to make an application for judicial review. We considered these responses to be entirely appropriate.

(iv) Complaint Decision

13. Having reviewed the content of each complaint and the response of the Commission, we were satisfied that the disposal of each complaint was appropriate. The outcome of the complaint and the reasons for the Commission's disposal were explained in clear terms to the complainant.

14. Of the 8 complaints received, 5 complaints raised the issue of delay by the Commission in either allocating a Commissioner or issuing the appeal decision. In each case, the Commission acknowledged an extent of delays, accepted that they were excessive and apologised to the complainant. We considered this approach to be both justified on the facts and entirely appropriate. In subsequent discussion, the Chief Commissioner explained the resource challenges which had been faced by the Commission during this period. They were largely related to a combination of turnover in Commission staff, the appointment of new

Commissioners; lead-in training time for new Commissioners; the complexity of some of the appeals/inquiries and the existing commitments of some of the more experienced Commissioners. While the issue of resourcing is outside the scope of this complaints audit process, we considered this explanation to be understandable and noted that the Commission expected significant improvement in appeal timescales in the future.

(v) Complaints Outcome

15. The outcome of the complaints was as follows:-

Not justified 3

Justified 4

Justified in part 1

16. All 4 complaints which raised the issue of delay were found to be justified. We considered this to be the appropriate outcome in each case.

17. Two complaints related to the substance of the appeal decision and were found to be not justified. Again, we considered this to be the correct outcome.

18. One complaint related to the conduct of a Commissioner during a site visit to the objector's home. The appeal raised the issue of adverse amenity impacts. It was alleged that the Commissioner had engaged in inappropriate conversation with the objector which touched upon the merits of the appeal. In the course of investigation, the Commissioner in question acknowledged that he ought not to have been drawn into conversation with the objector and that some of the comments may not have been appropriate insofar as they touched upon the merits of the appeal. This complaint was found to be justified. Once again, we consider this to be the appropriate outcome of the complaint.

19. In the final complaint, an issue was raised about the content of one of the Commission's pro-forma forms which must be completed by objectors. The complaint alleged that the form was misleading and had misled the objector about her participation rights in a future appeal hearing. We reviewed the form in question and discussed it with the Commissioner. We considered this complaint to be more evenly balanced. While we understood the reasons given by the Commission for finding the complaint to be not justified, we did consider

that the form contained a potential for confusion amongst non-professional

objectors who may wish to participate in an appeal. The Chief Commissioner indicated that the Commission would be willing to review the form in future. We considered this to be an appropriate outcome.

RECOMMENDATIONS/COMMENTS

20. Having reviewed each of the complaints and having discussed the procedures and outcome of our review with the Chief Commissioner, we were entirely satisfied that the Commission had followed its complaint process in every case and that it responded in an appropriate fashion to all complaints received in a timely fashion.

21. We also had the benefit of a detailed discussion with the Chief Commissioner and the designated complaints handling official regarding the findings of previous audits. We were informed of a number of procedural changes which we consider to be of great benefit and which we found had added considerably to both the transparency of the complaint system and its effectiveness. These included the following:-
 - 1) A dedicated member of staff has been appointed to oversee implementation of the complaints process for all complaints received. This includes the allocation of a file number, supplying a copy of the complaints procedure and monitoring timescales for reply.
 - 2) The complaints process is recorded in digital form on a computer system. This provides staff with diarised dates for acknowledging and responding to complaints together with reminders. It is clear from the operation of the complaints system during 2023/24 that this change has ensured very effective compliance with timescales.
 - 3) The Commission has developed a record keeping system for recording details of the complaint on a pro-forma form which is kept on the complaint file. It summarises the key details including the dates of each complaint, the name of the complainant, the appeal file, the allocated Commissioner, the individual overseeing the response to the complaint, the subject matter of the complaint and timescales. This is an extremely welcome development. Each complaint file was presented to us with this summary completed. We commend the Commission for this initiative which greatly assisted transparency in the process and the completion of our audit in an efficient manner.

22. We made two very minor suggestions to Commission staff regarding additional

information to be included within the record sheet, namely the inclusion of the date of the event which gave rise to the complaint and an additional option for recording all three possible types of complaint (i.e. procedure/administration; conduct of appeal; substance of decision) These suggestions were accepted and we were informed that they would be incorporated into the record form for future years.

23. The complaint which related to the content of the Commission's objector form was also discussed in some detail with the Chief Commissioner. The complainant had submitted a written objection to the planning application. The form provided the objector with two options for participation in the appeal. The first option was to participate in the appeal and to submit a statement of case. The second option was to submit no further material over and above the written submissions already made. The complainant selected the second option. However, she understood that by doing so she would still be informed of and entitled to participate in the appeal hearing. Her rationale for selecting the second option was that she had no further evidence to submit at that time. She received no further notification about the appeal, was unaware of the appeal hearing, did not attend and did not submit any further representations. She complained that the form did not adequately explain the option of attending at the appeal hearing, without submitting a statement of case.

24. We considered that there was some merit in the complaint, in so far as the option to continue to participate in the appeal suggested that a statement of case would also be necessary. We understand from discussion with the Chief Commissioner that this is not the case and that objectors can attend at the hearing, without submission of a statement of case and rely on previous written objections. We accepted the view of the Commission that the objector could have made contact with the Commission and clarified any ambiguity. She also could have consulted detailed information available on the Commission's website about participation in appeal hearings where she would have found the necessary information about Commission procedures. We therefore accepted that the Commission's decision that the complaint was not justified, was acceptable. However, the Chief Commissioner did acknowledge that it might be appropriate to make express reference to the procedural information on the website and also to review the content of the form. The Commission is currently reviewing its procedures in order to facilitate the growing practice of conducting remote hearings and was willing to review the form as part of this broader review. We welcomed this initiative and considered it to be an entirely appropriate response to this issue.

25. We also discussed with the Chief Commissioner the issue of systemic delays which were raised in more than one appeal case. We noted that in a previous year, when responding to a complaint substantially outside the target timescale, the Commission had raised the possibility of a complaint to the Public Service Ombudsman about non-compliance with the complaint procedure. We discussed with the Chief Commissioner whether it may be appropriate to highlight this option in cases where there has been delay in conducting an appeal.
26. The Panel recognises that delay in responding to a complaint for which the Commission has a published complaint procedure is very different to delay in conducting appeals as a result of broader personnel and resource challenges which the Commission has recently faced. We also acknowledge that the jurisdiction of the Public Service Ombudsman is limited by statute and that the two complaint systems do not necessarily overlap. While we did not consider it to be necessary for the Commission to refer complainants to the Public Service Ombudsman where there had been systemic delays, the Chief Commissioner did acknowledge that it may be helpful to review how the two processes may overlap and to consider any appropriate changes to the complaint system to accommodate cases in which a reference to the Public Service Ombudsman may be more appropriate.
27. We wish to thank the Commission for the assistance and cooperation it provided in the course of our audit and we hope that this report is of some assistance.

Catharine McWhirter

Royal Town Planning Institute

Paul McLaughlin KC

Bar Council of Northern Ireland