

Role of the Inspector

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Version 2 updated and edited for PEDW. Consolidates information from previous chapters/guidance (including Overview of How Inspectors work, 2017 appeal regulations, HAS/CAS, The Welsh Language, Casework Submission Targets, Challenges, Complaints) and updated references to relevant PEDW/WG policies, procedures and guidance.	

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Introduction

1. This chapter explains the principles and procedures which are fundamental to the Inspector role and will need to be adhered to by the postholder.
2. **Annex A provides an overview of how Inspectors work, focussing on the practical and administrative side of the role. Whilst of particular interest to those in training, all Inspectors should regularly reappraise this advice.**
3. More detail on the principles established in this chapter are set out in:
 - Site Visits
 - Human Rights and the Public Sector Equality Duty
 - Approach to Decision Making
 - Hearings and Inquiries
4. Key legislation, caselaw and other guidance is set out in the table below.

Legislation	<ul style="list-style-type: none">• Town and Country Planning Act 1990 (as amended)• Planning and Compulsory Purchase Act 2004 (as amended)• Human Rights Act 1998• Equality Act 2010• Town and Country Planning Development Management Procedure) (Wales) Order 2012 (as amended)• The Town and Country Planning (Development Management Procedure (Wales) (Amendment) Order 2015• Town and Country Planning (Referred Applications and Appeals Procedure) Regulations 2017• Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017
Judgments	<ul style="list-style-type: none">• Associated Provincial Picture Houses v Wednesbury Corporation [1948]• R. (on the application of Ortona Ltd) v SSCLG [2009]
Guidance	<ul style="list-style-type: none">• WG HR advice on the intranet, e.g., the Civil Service Code• Procedural Guide – Wales• WG Development Management Manual & Annexes

Duties of the Inspector

Planning and Environment Decisions Wales (PEDW)

5. **PEDW is a division of the Welsh Government (WG) and is responsible for a wide variety of work, including:**

- Planning, enforcement and listed building appeals
 - Applications which have been 'called-in' by the Welsh Ministers
 - Developments of National Significance (DNS) applications
 - Development plan examinations
 - Specialist casework including environmental permitting, roads orders, compulsory acquisition, common land and rights of way matters.
6. PEDW's is subject to an operational **protocol agreed with WG**. Its overarching ambition, as set out in the Strategic Plan, is: *to deal with casework in a timely, fair, impartial, and open way to deliver for our stakeholders and enable good planning outcomes.*

The 'Franks' and 'Nolan' Principles; Codes of Conduct

7. The key guiding principles for PEDW staff are openness, fairness and impartiality. These principles were established by the Committee on Administrative Tribunals and Enquiries, chaired by Sir Oliver Franks in 1957.
- **Openness** means that you must get no secret briefings. All policy and evidence should be available to the parties just as it is to the Inspector.
 - **Fairness** means that all parties with an interest in a decision are given adequate notice of the proceedings, have a proper opportunity to state their case and to reply to the representations of others.
 - **Impartiality** means that you must maintain a high level of integrity and objectivity when facing the issues and evidence before you. You should come to a case with an open mind. You must be impartial and unbiased and must be seen to be so. You must not be subject to any improper influence or appear to be subject to such influence.
8. **PEDW's Code of Conduct** sets out the conduct expected of staff. It is based on the Franks Principles and the Seven Principles of Public Life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership) set down by Lord Nolan's Committee on Standards in Public Life in 1995.
9. You must also comply with the **WG's Civil Service Code and Human Resources policies** relating to expected standards of behaviour. In particular, be aware of the policies on personal conduct, security and private interests.
10. You must be familiar with these principles and Codes of Conduct and abide by them. If, at any time, you have any doubt as to whether your conduct might pose a reputational risk to PEDW, seek advice from your line manager.

Natural justice and 'Wednesbury reasonableness'

11. You should apply the rules of **natural justice**. These can be summarised as a duty to **act fairly** and **without bias**. The principle is that all parties must have a

fair opportunity to comment on a matter which might be a determining issue; a 'fair crack of the whip'¹.

12. Decision makers also have a duty to act **reasonably**. The *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223 judgment makes it clear that a decision is unlawful where the decision maker:
 - takes into account factors that ought not to have been taken into account, or
 - fails to take account of factors that ought to have been taken into account, or
 - takes a decision that was so unreasonable that no reasonable authority would ever consider taking it.
13. The Courts have defined "**unreasonable**" as "beyond the range of responses open to a reasonable decision maker" (R v Ministry of Defence ex p Smith [1996] QB 517). In administrative law the term "**irrationality**" generally means that a decision does not add up: in other words, there is an error of reasoning which robs the decision of logic (R v. Parliamentary Commissioner, ex parte Balchin (No. 1) [1998] 1 PLR 1, per Sedley J at p. 13E-F).

The Planning Inspector and the Welsh Ministers

14. Inspectors carry out two main roles for the Welsh Ministers:
 - **'Transferred casework'** – This is where you act as the decision maker on behalf of the Welsh Ministers. You 'stand in the shoes' of the Minister and must have the same regard to the Minister's policies as he or she would. Schedule 6 of the 1990 Act provides the authority for planning appeals to be determined by Inspectors². Most appeals are 'transferred'.
 - **'Welsh Ministers' jurisdiction casework** - This includes applications which are 'called in' (under section 77 of the 1990 Act) and appeals which are 'recovered' by the Ministers (under Schedule 6 of the Act). In both cases you write a report with recommendations and the final decision is made by the Welsh Ministers. You are the Ministers' representative and must write a report and make recommendations to the Ministers.
15. In both roles, it is the Inspector's duty to apply the policies that have been established by the Ministers. It is not appropriate to question or criticise them.
16. When acting on behalf of Ministers, each Inspector is technically a tribunal (governed by relevant Acts, Statutory Instruments and case law) and the decision-making process is quasi-judicial in character. Consequently, there

¹ *R (oao Poole) v SSCLG & Another* [2008] EWHC 676 (Admin)

² Schedule 14 of the Act applies to footpath and bridleway orders. Different legislation applies to some other types of casework, e.g., Schedule 3 of the 1990 (Listed Buildings and Conservation Areas) Act, Schedule 15 of the Wildlife and Countryside Act 1981 and Schedule 6 of the Highways Act 1980 (public rights of way)

should be no evidence before the Inspector which is not available to other parties. Each Inspector must exercise impartial judgment and must not be subject to any improper influence, nor give the appearance of such.

Human Rights and the Public Sector Equality Duty

17. The Human Rights Act 1998 enshrines most of the fundamental rights and freedoms in the European Convention on Human Rights (ECHR). Article 6.1 of the ECHR provides that 'in the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing...by an independent and impartial tribunal established by law'.
18. In the case of *Bryan v UK* (44/1994/491/57) (1995), the ECHR found that appeal proceedings ensured a fair hearing, but the Secretary of State's ability to revoke the Inspector's power to decide it was enough to deprive the Inspector of the requisite appearance of independence. Nonetheless, the provision for High Court challenge satisfied the requirements of Article 6.1 of the ECHR. The 2001 judgment of the House of Lords in *R v Secretary of State for Environment, Transport and the Regions, ex p Holding and Barnes* (often referred to as the 'Alconbury case') also confirmed that the planning system as a whole, including the right to judicial review, complied with Article 6.
19. It is unlawful for a public authority to act in a manner which is incompatible with the Human Rights Act, and it is therefore important to keep human rights in mind when making decisions. An Inspector must also comply with the Public Sector Equality Duty (PSED) in the Equality Act 2010. If your actions and decisions are based on the Franks/Nolan Principles and Codes of Conduct, this will help you to comply with the Human Rights Act and PSED. However, more detailed advice is provided in the **Human Rights, Public Sector Equality Duty and Personal Circumstances** chapter.

Well-being duty and the sustainable development principle

20. Section 3 of the Well-being of Future Generations (Wales) Act 2015 places a **well-being duty** on public bodies, including PEDW, requiring them to carry out sustainable development. To achieve this, a body must publish **well-being objectives** to maximise its contribution to the achievement of **seven well-being goals** defined in the Act. PEDW is bound by the Welsh Ministers' well-being objectives, which are reviewed/updated after each Senedd election.
21. Section 3 also requires public bodies to take all reasonable steps to meet their well-being objectives in exercising its functions. This is achieved via the **sustainable development principle** set out in Section 5, which requires public bodies to act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Section 5(2) breaks this down into five things which a public body must take account of, commonly known as the **five ways of working**.

22. The five ways of working emphasise the need for **collaborative and joint working** and should be considered by Inspectors when taking procedural decisions, for example to ensure that public bodies are involved where a decision may impact on the achievement of their own well-being objectives, and to ensure that the views of any person with an interest in achieving the well-being goals are properly taken into account.

Welsh Language Standards

23. The Welsh Language (Wales) Measure 2011 affords the Welsh language official status in Wales, meaning that it should be treated no less favourably than English, and requires public bodies to meet **Welsh Language Standards**. These set out specific requirements for Welsh language provision and translation for different types of events, meetings or interactions with the public.
24. PEDW must meet the Welsh Minister's Welsh Language Standards, which have been in place since March 2016. Early in the appeal process, parties will be asked to confirm their preferred language for communication. If anyone has asked to be communicated with in Welsh, the case file will confirm this via a **language preference form**. The Inspector has a duty to appraise this form and ensure that parties are communicated with in their chosen language.
25. At a hearing or inquiry, the Inspector must, in Welsh, inform those present that they are welcome to speak Welsh and that translation is available, and to provide a bilingual agenda. See the **Hearings and Inquiries chapter** for detailed advice on this.

Impartiality and Independence

26. How Inspectors conduct themselves in their role, and what they do outside of work or in their previous employment, can affect their perceived impartiality.

Preclusions from casework

27. You should not take on casework where there might be something in your private, professional or financial life which could conflict with your duty to act fairly, openly and impartially. Nor should you handle casework where there could be a **perception** of bias or a **potential** conflict of interest.
28. You must preclude yourself from working in the area in which you live. **Use your judgment to determine whether this should relate to the LPA area or specific postcode(s). As a rule of thumb, avoid working in places where you spend a substantial amount of time or have several close associates.** You should also preclude yourself from working in LPAs which you previously worked for, or from handling casework involving previous private employers and clients.

29. Always be alive to potential conflicts of interest. Review cases when they are allocated to check whether any matters or parties raise issues. Advise Chart if you consider that you should be precluded from a particular case.
30. Where you have been involved in examining an LDP, you should not determine an appeal on any allocated site or any other site specifically referred to in the report, even if it is not allocated in the plan. You should also not determine appeals that turn on a policy on which you imposed a binding change (e.g. affordable housing thresholds and targets). However, it would be appropriate to handle cases that turn on generic development management policies.
31. The need to consider potential conflicts of interest is illustrated by the Ortona case³. The Inspector previously worked for a Council, where he had written transport policies at issue in the appeal. Although four years had passed since he left the Council, the Court found that a fair-minded observer would have concluded that there was a real possibility of bias. The decision was quashed.
32. **The Chart Officer will reconfirm preclusions from time to time.** If you feel that a preclusion should no longer apply (e.g. where you have worked for PEDW for a few years and are no longer familiar with staff working for a former employer) discuss this with your Inspector Manager, but always err on the side of caution.

Conflicts of Interest

33. You should read **PEDW's Conflict of Interest Policy**, which sets out how to identify potential conflicts of interest and covers subjects such as property and financial interests, unpaid and political activities, membership of organisations, and interests of families and close associates. **Generic guidance for all WG staff is also available on the intranet.**
34. If you have any doubts about whether there could be a perceived conflict of interest, consider how the parties might react if they knew the circumstances. If you are uncertain, discuss this with your line manager **as soon as possible**.
35. **Staff working at Grade 6 and 7 are precluded from taking part in general and devolved political activities (including canvassing) but may apply for permission to take part in local political activities. See the WG Political Activities Policy for more information.**
36. You should obtain the approval of the **Chief Planning Inspector** before seeking or accepting an official position in a professional institution. If you subsequently act on behalf of a professional institution, it will not be appropriate for you to comment on, question or criticise the Ministers' policies.

³ R. (on the application of Ortona Ltd) v SSCLG [2009]

37. Any interest in Freemasonry must be registered with PEDW. If asked at an inquiry or hearing, you should provide the information yourself. If asked at an accompanied site visit, refer the questioner to the Case Officer.
38. If using your own vehicle for site visits, ensure that no stickers are displayed which might cause people to doubt your impartiality. Similarly, avoid wearing clothing or using accessories which feature organisational brands.

Interacting with parties at events

39. The site visit, hearing or inquiry will be the parties' only contact with an Inspector. The Franks Principles and Codes of Conduct should be adhered to throughout. Outside of public events, contact with the parties will be made in writing through the Case Officer. Attempts by any party to engage with you outside of a site visit, hearing or inquiry should be politely declined.
40. At events, avoid any situations where you may be perceived as engaging in a discussion with only one party. Always ensure that someone from the opposing side is present during such conversations. If a single party's presence at a site visit is required solely to provide access to a site or property, you must state that there will be no discussion of the planning merits of the case.
41. If any party attempts to entice you to make a decision in their favour, report this immediately to your Inspector Manager.
42. Further advice is provided in the **Site Visits** and **Hearings and Inquiries** chapters.

Involvement in casework in a private capacity

43. You are entitled to make representations on LDPs, planning applications and appeals in either Wales or England, but in all cases you must:
 - not use your position as an Inspector to influence a decision or outcome,
 - avoid situations where others might reasonably perceive that you have sought to use your position to influence the outcome,
 - consider whether making a representation might constrain your future ability to carry out casework (e.g. to impartially consider similar issues elsewhere),
 - not directly discuss the case in question with the decision maker, their manager or any other staff who might be involved in the case.
44. If you are involved in an appeal as an appellant or third party, you must notify the Chief Planning Inspector so that arrangements can be made to maintain the principles of independence and impartiality in the decision-making process.
45. You should also be careful about advising others on how they might make representations in a case or engage with the planning system in Wales.

46. Where a Non-Salaried Inspector (NSI) is party to an appeal within their private practice, **and they have carried out work for PEDW**, you should announce this at the hearing or inquiry. (This does not apply where it is only the colleague of an NSI who is appearing at the event and has been involved in the appeal). In written representations cases, PEDW will inform the main parties in writing⁴. Note that NSIs are not permitted to advertise or promote themselves on the basis that they have undertaken such work.
47. If in doubt discuss with your line manager but remember that it is your own responsibility to ensure that you comply with the relevant Codes of Conduct.

Gifts, rewards and hospitality

48. **WG's Code of Conduct and related Gifts, Rewards and Hospitality policy states that any employee who is offered a gift, reward, hospitality or other benefit must politely decline it. Failure to do so may result in disciplinary or legal action but might also compromise your personal judgement or integrity.**
49. Offers of a cup of tea on a site visit should be declined. **If the homeowner persists, explain that your Code of Conduct prevents you from accepting hospitality.** If you are in any doubt as to whether something could be construed as a gift or hospitality to you or your family, discuss it with your line manager.

Social media

50. **WG's Personal Use of Social Media guidance advises on the appropriate use of social and other digital media in the light of the Civil Service Code. In short:**
 - Do not identify that you work for PEDW on social media (unless the forum is specifically professional, e.g. LinkedIn).
 - Do not conduct yourself in a way that could be detrimental to PEDW or could compromise your impartiality.
 - Do not engage in exchanges which could damage working relationships.
 - Do not assume that *anything* posted online will remain private.

Pre-election periods

51. Staff will be notified of pre-election periods during which the handling of casework will need careful consideration, particularly if a decision/outcome is politically sensitive. During these periods, Inspectors should also ensure that public events are not used for electioneering.
52. General election principles will usually apply where specific guidance has not been issued. During such periods routine casework will be issued in the usual

⁴ Similar arrangements must be applied when any PEDW employee has declared an interest in a case.

way, but if an Inspector considers that a decision gives rise to local sensitivities, they should consult their line manager before submitting the decision. If it is agreed that the decision should be held back, the Inspector's covering email must clearly state that the decision is not to be issued until after the election. The Inspector will not be penalised for missing targets.

53. For LDP examinations, it can be useful to check with the LPA whether it is content to receive sensitive correspondence during the election period.
54. Reports/recommendations to the Welsh Ministers should be issued as usual, as it will be for them to consider the implications of the timing of any decision.

Casework procedures, timescales and targets

55. Most procedural matters will be undertaken by the Case and Chart Officers, but Inspectors should be alive to any potential procedural defects and must ensure that appeals are processed in a manner which allows the relevant evidence to be gathered and, if necessary, tested.

Regulatory framework

56. You should be familiar with the key rules/regulations and guidance governing appeal procedures, in particular the 2017 regulations applying to referred applications and appeals (a list is provided at the start of this chapter).
57. The 2017 regulations resulted in several changes to procedures, including:
 - Shorter timescales for determining appeals, with hearings held within 10 weeks of the start date and inquiries within 18 weeks.
 - Other than in certain circumstances, prohibiting appellants from raising any matter which was not before the LPA when it made its decision, and requiring full appeal grounds to be provided at the point of submission (or within 7 days for enforcement appeals).
 - Requiring LPAs to submit a full statement of case for enforcement appeals, and for any statement to be submitted within 4 weeks of the start date.
 - Allowing applications/appeals to be determined via a mixed procedure.
 - Allowing costs applications to be made on written representations cases, and for the Welsh Ministers to recover and initiate awards of costs.
58. Where statutory rules expressly state that a particular course of action will be taken, the Inspector has **no discretion** to depart from it unless specifically stated. See para 49 of *Turner v SSCLG & Others* [2015] EWHC 375 (Admin).

Choosing or changing the procedure

59. Appeals may be dealt with by written representations, hearings, inquiries or a combination of these procedures. PEDW is responsible for determining the procedure, based on criteria set out in 'Procedural Guide – Wales'.
60. Appeals must follow a procedure which allows the evidence to be properly understood and, where necessary, tested. When allocated a case, Inspectors should consider whether the selected procedure is appropriate. Whilst written representations is the default, an initial call will be made by the Case Officer based on the published criteria, the nature of the case and the matters at issue. Where this differs from the appellant's choice, the reasons will be set out in the start letter.
61. A Case Officer may seek an Inspector's view if they are unsure. If the parties' comments are needed to reach a view, the Inspector should inform the Case Officer which information is required and by when. If a procedure is chosen which differs from the appellant's choice, the Inspector should provide reasons to the Case Officer for inclusion in the start letter.
62. Occasionally the LPA's questionnaire or written statement may expose or resolve concerns which may require a change to the procedure. If so, consider if the parties should have the opportunity to comment on a proposed change to the procedure. Reasons for any change must be given in a formal notification.
63. Written notification of the chosen procedure must be given within 6 weeks of the start date. If a hearing or inquiry is to be held, 4 weeks' notice of the event must be given. To give the Chart Officer sufficient time to liaise with the parties as to date and venue, the need for any hearing or inquiry should normally be determined between week 2 and the end of week 4.
64. Notification of a hearing or inquiry must specify the name of the Inspector, the invited participants, the matters to be determined at the event, and the date, time and venue. The **Hearings and Inquiries** chapter provides further advice on this, but note that:
- It is preferable to frame the notified matters broadly (e.g. 'the effect on the area's character and appearance') rather than via detailed questions.
 - It may be appropriate to confirm that **all** main issues and other matters are to be discussed at a hearing or inquiry, particularly for smaller cases.
 - You may invite statutory consultees to an event even if they have not expressed a desire to participate.
 - You have the discretion to allow anyone who was not previously invited in writing to participate on the day.
65. Site visits may be undertaken on an unaccompanied, accompanied or an 'access required' basis. The Chart Officer will make an initial decision based on the main parties' choice and site circumstances, but the Inspector must review this at an early stage and consider whether the chosen method will allow them

to properly observe the site and surroundings. More advice is provided in the **Site Visits** chapter.

Householder, advert and minor commercial appeals (HAS & CAS)

66. The Town and Country Planning (Development Management Procedure (Wales) (Amendment) Order 2015 provides for an expedited appeal procedure applying to applications for extensions and alterations to dwellinghouses and incidental development within their curtilage (e.g. garages and walls), advertisements, ground floor alterations to commercial buildings, or the variation of a condition relating to such developments.
67. The Inspector's decision is made on the basis of the plans which were before the LPA when it made its decision, the LPA's case as set out in the Decision Notice and any related report/minutes, the appellant's grounds of appeal, representations made in relation to the original application, and any documents provided with the LPA's questionnaire. The process does not allow the LPA or third parties to make additional comments on the grounds of appeal or other appeal documentation.
68. Case Officers will consider whether a case is appropriate for HAS/CAS, but it is the Inspector's responsibility to ensure that principles of natural justice are adhered to. If the Inspector determines that an appeal is not suitable for HAS/CAS, Regulation 9 allows the procedure to be altered. This may be required if, for example, new evidence is raised in the appellant's grounds of appeal which others should be given the opportunity to comment on, amended plans have been submitted, the case raises complex issues which require further representations, or the case is linked to an enforcement appeal. However, Regulation 8 permits Inspectors to seek further information relevant to the appeal under the HAS/CAS procedure, so for straightforward issues it is sufficient to seek parties' views within a restricted period (e.g. 7 working days).
69. If you consider that a case should be taken out of HAS/CAS, contact the Case Officer as soon as possible and ask them to re-start the case.

Obtaining further or missing information

70. The 2017 regulations allow Inspectors to request further information in writing from the appellant, LPA or any third party who has submitted reps between weeks 1 and 4 of the appeal. The default limit is 3,000 words, with discretion to increase this, subject to a summary of up to 1,500 words being provided.
71. If documents have been omitted from the appellant's or LPA's submissions, provide the Case Officer with a form of words to obtain them. Of critical importance are the relevant plans and elevations (particularly prior to the site visit), LDP policies and any appeal decisions referred to (and possibly related plans). An example form of words to provide to the Case Officer is:

The appointed Inspector notes that the parties have referred to an appeal decision at a nearby site (Ref: [No]), but related documentation has not been provided. Please could the LPA therefore submit, by return email, a copy of the relevant decision letter and related site/location plan, copying in the appellant's agent when it does so. This information should be submitted no later than 5pm on [5 working days after sending].

Language preferences of participants

72. Case files include a language preference form to identify the preferred language of appeal parties. If one is not included, it should mean that all parties have indicated a preference to communicate in English.
73. If a written representation has been made in Welsh, a translation should be included on the file. If this has not happened and you require a translation, ask the Case Officer to arrange one, rather than relying on Google Translate.
74. If you need to communicate with the LPA/appellant before or after an event, check if any party has indicated a preference to communicate in Welsh, and inform the Case Officer if a translation is needed.

Late representations

75. The 2017 regulations allow Inspectors to disregard late representations. However, this does not override the requirement to take a material consideration into account or apply the principles of natural justice, so consider your approach carefully.

Personal and sensitive data

76. Business Support and Case Officers will redact documents to remove personal data prior to publishing them. However, when reading documents which have been published on CRM Inspectors should alert Case Officers immediately to anything identifying a person's racial or ethnic origin, political opinions, religious beliefs (or similar), physical or mental health or condition, affiliation to a trade union or sexual life. Documents must also not contain information relating to the commission or alleged commission of any offence by an individual, including any legal proceedings in that regard; or any personal data relating to minors.
77. Representations made by third parties are normally where these types of issue will arise. However, in technical evidence any environmentally sensitive information which could result in an adverse effect on a protected species should also be redacted (e.g. locations of nests, roosts or setts).
78. More information is provided in all-staff PEDW guidance.

Timescales for processing casework

79. Whilst not defined in regulations, the following Ministerial Targets for appeal casework were set by WG in July 2017.

Casework type	Target
HAS & CAS	8 weeks
Planning / Listed Building (LB) / Conservation Area (CA): written representations (WRs)	15 weeks
Planning, LB, CA: hearing	21 weeks
Planning, LB, CA: inquiry	29 weeks
Enforcement, LB enforcement, maintenance of land: WRs	28 weeks
Enforcement, LB enforcement, maintenance of land: hearing or inquiry	41 weeks

Inspector targets

80. To allow time for administration (and in some cases, translation) Inspectors must submit **all decisions at least 1 week in advance of the Ministerial Target**. In addition, Inspectors must adhere to these **Aspirational Targets**:

- Written representations: **20 working days** commencing the day following the visit.
- Hearings and Inquiries: **25⁵ working days** commencing the day following the event.

81. For **reports** to the Welsh Ministers, the Ministerial Target is 7 weeks after any event up to 7 sitting days and 24 weeks for Developments of National Significance. For cases with longer sitting periods a bespoke target is set. Due to the length and complexity of reports, they should be submitted for reading **at least 2 weeks** before the Ministerial Target.

82. The Ministerial Target is the first priority and may justify a missed Aspirational Target on another case. If any target is missed Inspectors should record the reasons for this. These will be taken into account by Inspector Managers when reviewing performance against targets in annual reviews.

Reading and Quality Assurance

83. The following types of decision require pre-issue reading. This should be flagged by the Inspector when sending to the 'PEDW – Gwasanaethau Canolog / Central Services' inbox:

- Appeal casework where the Inspector is working outside their area of specialism.
- Re-determinations.
- Welsh Ministers' casework where novel or contentious issues are raised.

⁵ If sitting for more than 3 days, +1 day should be added for each additional sitting day

- HMO cases.

84. Other types of casework may be submitted to their Inspector Manager for a second opinion where necessary, for example where novel or specialist issues are raised.

Retention of notes and documents

85. Case files are destroyed one year after the date of the decision unless there has been a High Court challenge or post-decision correspondence. You should retain site visit, hearing and inquiry notes for three months following the issue of your or the Welsh Ministers' decision, unless the case is subject to a challenge, in which case keep your notes until the completion of the High Court and any higher court proceedings. If you leave PEDW, return your notes for all cases worked on in the last three months to the office.

86. Hard copies of documents containing sensitive personal information must be shredded. This can be done by sending the documents to the office, or via a home shredder.

Complaints

87. Complaints are made to PEDW or the Public Service Ombudsman for Wales (the Ombudsman will normally refer the complainant to PEDW first). About 60% of complaints are from third parties. Some can be made pre-decision.

88. PEDW defines the term 'complaint' as *any adverse comment about an appeal decision or procedure*, even if the correspondence is generally positive. This includes any request to clarify something in a decision which is unclear.

89. The complaint investigation is usually undertaken by a member of the Leadership Team. If it is found that the complaint should be upheld, it will be count as a Justified Complaint. However, the original decision will stand.

90. If the Inspector accepts that an error has occurred, PEDW will reply to the complainant without further input. If there is any doubt, or the issues are not clear cut, the person conducting the complaint investigation will seek the Inspector's comments before coming to an independent view. If ambiguity remains, or the Inspector and the complaint investigator are in disagreement, the matter will be determined via the Leadership Team collectively.

91. Upon the completion of an investigation, PEDW will reply to the complainant with an explanation, apology, or both, notifying the Inspector where appropriate.

92. Following a complaint, if it is found that PEDW did something it shouldn't have, or vice versa, and this error be corrected without impacting on the procedure or outcome of the case, it will not count as a complaint.

Justified Complaints

93. Justified Complaints are categorised as:

- **Minor:** judged not to have affected the outcome of the case. Does not include trivial typographical or factual errors, e.g., a misspelled name.
- **Significant:** potentially affecting the outcome of the case or perceived to be prejudicial to a party's interests, e.g., if an Inspector has failed to notice a window from which overlooking would be possible.

94. PEDW's aim is for 99% of decisions to be free from significant Justified Complaint (or successful legal challenge). This is a high bar but is necessary to uphold PEDW's standing as a respected appellate body. This organisational target also translates into individual targets for Inspectors.

95. Typical categories of Justified Complaint include:

- Improper conduct of a site visit, hearing or inquiry.
- Failure to comply with the principles of natural justice.
- Taking into account an irrelevant factor or failing to take account of a relevant factor.
- Misinterpreting relevant evidence, policy or factor.
- Inadequate or perverse reasoning, or a significant error of judgement.
- Inclusion of unnecessary or inappropriate comments, including repetition of defamatory remarks or allegations made by an appeal party.
- Errors, omissions or oversights in the wording of an imposed condition.
- Inclusion of personal or other sensitive details in the appeal decision.
- Using wording that is genuinely capable of being misunderstood.

Correcting errors in decisions ('Slip Rule')

96. Part 5 of the Planning and Compulsory Purchase Act 2004 allows PEDW to issue a 'Correction Notice' to amend published decisions, provided that the error does not relate to any of the reasons given for the decision and is a self-evident clerical mistake, typographical error, omission or accidental slip which is obvious to the appeal parties. This process is referred to as the Slip Rule.

97. A Slip Rule request can be made by any person, including an Inspector who detects an error in their own published decision, but must be submitted within the relevant High Court challenge period. A corrected decision will replace the original and will usually carry a new date, thereby resetting the relevant High Court challenge period. Further advice is provided in PEDW's Slip Rule guidance.

The Public Services Ombudsman for Wales

98. The Ombudsman investigates complaints by those who claim to have sustained injustice as a consequence of maladministration arising from action taken by a government department. This includes alleged bias, neglect, incompetence, discourtesy, a failure to follow proper procedures or serious delay.
99. The Ombudsman can investigate whether there has been maladministration in the decision-making process but cannot change an Inspector's decision. If satisfied that there is a case to answer, the Ombudsman will write to PEDW, seeking a response to the details of the complaint. Inspectors involved in a complaint will be advised of any necessary procedures.

High Court challenges

100. Sections 288 and 289 of the TCPA allow decisions⁶ made by PEDW to be challenged in the High Court ('Judicial Review'). The right of challenge extends to any "person aggrieved" and can include the appellant, LPA or any third party who made representations during the appeal.
101. Challenges to planning appeal or listed building consent appeal decisions must be made within six weeks (42 days) from the day after the date of the decision. Challenges to enforcement appeal decisions and LBEN decisions must be made within 28 days of the decision date, unless the Court extends this period.
102. Applications require the leave of the High Court before a legal challenge can be made. If the court decides that there is an arguable case, it grants permission to proceed with the substantive proceedings. If permission is refused, the claimant can request that it is reconsidered at an oral hearing.
103. **PEDW's High Court challenges guidance provides more information on the process for handling challenges, including what is required of Inspectors.**

Scope and grounds of legal challenge

104. The Courts are concerned only with the legality of a decision, not the planning merits of a case. The Courts' starting assumption is that the Inspector is an expert who will have understood the policy framework correctly. Judgments tend to follow the established principle that a decision should be read fairly and in good faith, and as a whole, in a straightforward down-to-earth manner, without excessive legalism or criticism, as if by a well-informed reader who understands the principal controversial issues in the case.

⁶ Including appeals made under TCPA sections 78 and 195, discontinuance orders, tree preservation orders, advertisement appeals, certain LDC and enforcement appeals, and maintenance of land appeals. Challenges relating to listed building consent or listed building enforcement notices are made under section 63 of the Planning (Listed Buildings and Conservation Areas) Act.

105. The grounds for challenge are that a decision is not within the powers of the Act, or that any of the relevant requirements have not been met (e.g. procedural requirements and rules) and as a result prejudice has occurred. The claimant must establish that the Inspector misdirected themselves in law or acted irrationally or failed to have regard to relevant considerations or that there was some procedural impropriety. Common areas of challenge include that:

- The decision is illogical or irrational (the 'Wednesbury' test).
- There was a failure to take account of a material consideration.
- Inadequate reasons were provided for the decision.
- There was a failure to correctly interpret or apply local/national policy.
- Natural justice or procedural fairness requirements were not met.
- Improper or inadequate consideration was given to the Human Rights Act, Equalities Act or Well-being of Future Generations (Wales) Act.

Outcomes of a legal challenge

106. There are four potential outcomes after a challenge:

- The challenge is withdrawn.
- The challenge is successfully defended.
- The challenge is successful.
- WG decides not to defend the decision and so 'submits to judgment'.

107. If the Court is satisfied that the decision contains an error in law, and that the interests of the claimant have been substantially prejudiced, the Court will normally⁷ quash the decision and return the appeal to the Welsh Ministers (in practice, a different Inspector) for redetermination. If you are dealing with a redetermined appeal, see the advice in **The Approach to Decision Making**.

108. If a challenge is successfully defended, that is normally the end of the matter, although unsuccessful claimants may seek permission to appeal to the Court of Appeal. Costs usually follow the outcome: if the case is won the claimant pays PEDW's legal costs, and if the case is lost, PEDW pays the claimant's costs.

⁷ In s289 appeals the decision is not quashed but is remitted for reconsideration with the opinion / direction of the Court. Rarely, the Court may decide not to quash or remit a decision, despite an error of law, if it is satisfied that an Inspector's decision would have been the same in any event.

Annex A: Overview of how Inspectors work



**PCAC
PEDW**

Penderfyniadau Cynllunio
ac Amgylchedd **Cymru**
Planning & Environment
Decisions **Wales**

Your working environment

- A1. Working from home has the advantages of no daily commute and flexible working. However, it also requires discipline to work efficiently and ensure that work does not encroach on your home life (or vice versa). In addition, it can also be quite isolating.
- A2. Make sure your home office is able to safely and comfortably accommodate a desk and chair, IT equipment including a printer, file storage and space to spread documents. Working on the kitchen table is not advised. The room should be well lit, heated, ventilated and comfortable. You will be spending a lot of your time in it!
- A3. **PEDW will supply the necessary furniture, IT equipment and stationery. Additional stationery can be ordered via the intranet.**

Organising your work

- A4. Case work is normally organised in weekly blocks by the Chart Officer, around 8 to 10 weeks in advance of events. A typical workload is **three** written representations (WR) cases a week, or 1 hearing per week. Staff are typically given one 'admin day' per fortnight for processing other work.
- A5. These casework volumes should give you ample time to read the appeal documents, conduct the site visits/hearing and write your decisions. The above numbers may vary depending on other factors as agreed with your line manager and Chart Officer. This includes travel time: **an additional half a day will be allowed where the one-way travel time is between 3-4 hours, and an additional full day where the one-way travel time is over 4 hours.**
- A6. Establish a routine that gives you a good work/life balance. **Take regular breaks, with at least 5 minutes' break from your screen each hour.** The working week is 37 hours: try to adhere to this, with definite start and finish times. At the end of each day, put your work out of sight to get a clear break from it.

Casework targets

- A7. PEDW has performance targets set by the Welsh Ministers. It is the responsibility of Inspectors to ensure Ministerial Targets (MTs) for specific cases are met, unless there are extenuating circumstances. Inspectors in training may be set different targets which will be monitored by Inspector Managers.

A8. The MT for each case is identified on the CRM casework record. Completed decisions must be emailed to the PEDW Central Services inbox **at least one week before the MT** and in line with the **Aspirational Target**. Where PEDW has agreed to provide decisions in Welsh and English as much time as possible should be given to allow for translation⁸.

Reading regime for Inspectors in training

A9. Inspectors in training have their casework read by a Reader before it is issued. Decisions are marked as follows:

Issuable	Free from errors (no more than two typos) and can be issued without risk of a justified complaint or successful High Court challenge.
Issuable; amendment required	A decision that could be issued without significant risk of a justified complaint or successful High Court challenge but contains minor errors that do not go to the heart of the decision or would not significantly undermine the authority of the decision and confidence in it.
Not Issuable; significant errors.	Contains a significant error/s that would be likely to lead to a justified complaint or a successful High Court challenge, OR Decisions containing a number of smaller errors that taken cumulatively would significantly undermine the authority of the decision and confidence in it.

A10. In order to assess whether the Inspector has covered all matters adequately Readers must refer to all documents on the file. Whilst quality should not be compromised, the reading process should facilitate Inspector development rather than hinder their progress. The aim is to get Inspector's to take ownership of their decisions right from the start, rather than relying upon the reading regime for quality assurance.

Keeping on top of work

A11. If you are finding it difficult to meet targets, talk to your Inspector Manager before a backlog of work has built up.

A12. Business Support will set up bespoke 'My Views' in CRM which will enable you to view all of your allocated casework and recently issued decisions. However, keeping your own personal log of casework is also useful to refer back to, for example if another case raises similar issues.

A13. Casework is programmed well in advance. Inspectors should review cases **as soon as they are allocated** to ensure that any problems can be resolved with Chart and/or the Case Officer (e.g. to avoid conflicts of interest, secure missing

⁸ Decisions in both languages are provided to the following LPAs: Carmarthenshire, Ceredigion, Denbighshire, Gwynedd, Isle of Anglesey, Rhondda Cynon Taf, Snowdonia National Park.

documents, or change the appeal procedure). Actual or indicative dates/times for all site visits should be confirmed with the Chart Officer as soon as possible. It is also good practice to send the details of forthcoming site visits to your buddy at an early stage.

A14. All Inspectors work differently, but doing the following will help you to discharge the role effectively:

- Preparing for site visits well in advance and making clear notes of what you need to observe.
- Reporting on site visits as soon as possible after the event.
- Putting a draft decision aside for a couple of days and proof-reading it when the mind is fresh.

A15. Keep on top of filing, recordkeeping, booking travel/hotels, submitting expense claims and filling in your timesheet. Don't let them build up. Use your fortnightly admin day to keep abreast of changes to procedures, planning policy/guidance and caselaw flagged up by WG, the Leadership Team, Planning and Environment Team and trade magazines.

Keeping in touch and maintaining good well-being

A16. The nature of the job can be quite isolating. Staff are strongly encouraged to keep in regular contact with one other, for example via MS Teams to video chat or posting on the 'Social' channel, or meeting colleagues for coffee/lunch during site visits⁹. If you are struggling, talk to your Inspector Manager rather than bottling problems up. You are also encouraged to consider making use of the Employee Assistance Programme, which offers WG staff advice and counselling for problems at work or home.

A17. Inspectors meet quarterly at the Inspector Group Meeting (IGM), normally in person, although virtual attendance may be possible. The IGM is used as a general forum for updates and training. Staff are encouraged to join the social event, which normally takes place on a Thursday evening.

A18. Inspectors are in regular contact with Case and Chart Officers, normally by email or MS Teams. Any hard copies of documents will be posted to your home address and may need to be signed for.

A19. Whilst working flexible hours is a benefit of the job, it is important that you are contactable during office hours. Ensure your line manager, Chart officer and nominated 'buddy' have your contact details.

⁹ Whilst it can be helpful to talk with your colleagues about casework in general terms, never rely on others to make judgements about your cases, as you alone are the decision maker. Inspector Managers should be the first port of call for support on casework matters.

Dress code

A20. There is no dress code for staff when working in or out of the office or at events. Wear what is practical and will put your most at ease depending on the context, thinking also about your own health and safety. You may opt not to wear things which may draw unwanted attention: e.g., formal wear in a field. The only exception is where it is necessary wear Personal Protective Equipment (PPE) for your health and safety.

Travel and Subsistence

A21. When determining the mode of travel for work, take account of effectiveness and cost, but also your safety and well-being. Inspectors are encouraged to use public transport, but this is unlikely to be a realistic option unless your site visits are urban and geographically concentrated. Train travel is by standard class, but you may upgrade if seats are not available. Taxis can be used for work only in some particular specified circumstances, as agreed with your line manager.

A22. Business travel and accommodation **must be booked online**. If it is not feasible to travel and conduct an arranged programme in one working day you may need to stay overnight in a hotel. Subsistence costs (excluding alcohol) can be claimed in certain circumstances, using receipts as proof, subject to complying with the limitations and maximum claimable amounts set out in WG's **Travel and Subsistence guidance**. Ensure that claims are submitted promptly and avoid submitting claims for multiple trips at once.

A23. If travelling by car you may use your own vehicle if it is insured for business use and claim back a standard mileage rate. You may also **hire a car via WG's Days Rental contract**. You will need to pay for fuel and parking costs and claim these back. You must only use the hire car for PEDW business.

A24. If travelling by bike a standard mileage rate can be claimed, as with vehicles.

Health and Safety

A25. In addition to the health and safety guidance provided on the **intranet** and completing any required training, Inspectors must follow the health and safety guidance set out in:

- The PEDW-specific bespoke risk assessment for lone working, and
- The guidance in the **Site Visits** and **Hearings and Inquiries** chapters.

Notification of absence

A26. Notification of sickness absence should be made to your line manager without delay, who will log it on **HR Self Service** and, upon your return to work, will conduct an interview.