

# The Planning and Water Appeals Commissions

10-11

**Chief Commissioner's  
Annual Report**



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## This is the Annual Report of the Planning and Water Appeals Commissions for the year April 2010 - March 2011.



*Maire Campbell*

### In 2010 / 2011 the Commissions:

- \* Addressed the backlog of appeals awaiting determination;
- \* Reported to the Department of the Environment on 2 draft Area Plans; and
- \* Commenced the processing of the draft Northern Area Plan and 8 major planning applications.

### Appeal Caseload

In 2010/11, the Commissions received 440 appeals and issued 684 decisions. The Commissions processed 833 appeals but 149 appeals were withdrawn before a decision was issued. As a result, the backlog of appeals awaiting determination was reduced from 679 at the beginning of the year to 291 at the end. The intake of appeals in 2010/11 included 126 appeals in respect of Enforcement Notices, Lawful Development Certificates and "environmental" appeal functions. The complexity of these appeals lengthens the time required to determine them. In addition, while the number of appeals in default of a decision by DOE remains low, the majority of appeals are now more complex and take longer to decide.

### Referred Caseload

**Development Plan** - the Planning Appeals Commission delivered its report on objections to the draft Magherafelt Area Plan to DOE in January 2011 and also delivered its report on objections to the Strategic Plan Framework of the draft Belfast Metropolitan Area Plan in March 2011. The report on Strategic Retail Issues in the draft Belfast Metropolitan Area Plan had been delivered in January 2009. The remaining sections of the report on site specific issues will be delivered later in 2011. The Commission also expects to deliver its report on objections to the draft Banbridge, Newry and Mourne Area Plan in 2011/12. The processing of objections to the draft Northern Area Plan has commenced and the Public Examination of Strategic and General issues will commence in Autumn 2011.

**Major Casework** - in 2010/11, in addition to the major proposals referred since 2008, DOE referred 4 further applications to the Planning Appeals Commission. Accordingly, during 2010/11, the Commission has been processing 8 major developments. Public Inquiries for 3 proposals at Sprucefield and in Newtownards have

been delayed by arguments about the adequacy of the environmental information submitted with the applications. The processing of the application by George Best Belfast City Airport has been delayed by the submission of further environmental information. Two major proposals were withdrawn during processing by the Commission. These delays and late withdrawals are outside the control of the Commission but are very wasteful of limited Commission resources.

A hearing was held to consider a retail proposal in Belfast in April 2011 and this report was delivered to DOE later in April 2011. A hearing for a Londonderry development took place in May 2011. In April 2011, DOE referred the NIE Interconnector proposal to the Commission with a request that it be accorded priority.

### Performance

Notwithstanding the number of full-time Commissioners allocated to referred casework, the Commissions, since 2009, have applied substantial Commissioner resources to address the backlog of appeals awaiting determination. By March 2011, this backlog was less than the intake in the year and median times to decide appeals have been reduced substantially. The Commissions are now processing appeals submitted in early 2011. There were 36 complaints/applications for judicial review concerning the 684 decisions issued by the Commissioners; 5 of these were identified by the Commission as justified and the Commission agreed to the quashing of 3 decisions by the High Court.

### External Context

In early 2011, the Commission held a number of Focus Meetings with residents/community groups, planners/architects and lawyers. The Commission also had meetings with DOE, Institute of Directors, RTPI and Ballymena, Belfast and Coleraine Councils. Commissioners also participated in a number of training and briefing sessions for groups.

### Conclusion

In deciding appeals and in making recommendations to DOE, the Commissions have maintained their fair approach to all participants, the rigour of their investigation of the issues and the quality of their decisions. The Commissions achievements are due to the professionalism and dedication of Commissioners and administrative staff. I am indebted to them for their continuing support.

**MAIRE CAMPBELL**

**May 2011**



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# Introduction & Staffing

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## Function

The Planning Appeals Commission is an independent appellate body established under statute to decide a wide range of appeals and to report on various matters under planning and other legislation.

## Aims and Objectives

The aim of the Commission is to maintain its independence, free from any improper influence or external control.

In pursuance of this aim the Commission has the following strategic business objectives:-

- (1) to make the best possible appeal decisions and offer the best possible advice to Departments, consistent with the evidential context within which appellate functions are exercised;
- (2) to provide an efficient and effective service compatible with the maintenance of quality, high professional standards and available resources;
- (3) to provide clear, readily available and up-to-date information and guidance to all who come into contact with the Commission;
- (4) to achieve all performance measures and targets set by the Commission; and
- (5) to train, develop and maintain an efficient, well-motivated and united workforce.

## Vision

The Planning Appeals Commission's vision is to:

**P**rovide a fair, efficient and effective appellate service to the public;

**A**pply expertise and experience to information gathered through the process; and

**C**ontribute to the quality of our environment by making the best possible decisions.

## Core Values

The Commission, as an independent appellate body, attaches great importance to the following values in the exercise of its work:

- impartiality
- integrity
- openness
- fairness
- professionalism
- quality
- valuing workforce
- customer care

## Water Appeals Commission

The Water Appeals Commission is a separate appellate body and exercises a wide range of functions under water, fisheries and drainage legislation. It shares the vision, aims, objectives and core values of the Planning Appeals Commission.

## Accountability

The Chief Commissioner is responsible to the First Minister and deputy First Minister for the efficient and effective delivery of service. Accountability in this respect is through our sponsor Department, the Office of the First Minister and deputy First Minister. In terms of their decisions, the Commissions are accountable only to the Courts and this reflects their independent appellate roles in planning and environmental processes.

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**Chief Commissioner**

Mrs M I R Campbell BA MCD MRTPI Solicitor

**Deputy Chief Commissioner**

Ms E Kinghan BA MSc MRTPI

**Principal Commissioners**

Mr T A Rue MA (Econ) DipTP MRTPI  
 Mrs M McCabe BA MA MRTPI  
 Mr G Scott BSc MRTPI  
 Mr S O'Hare BA DipTP MRTPI  
 Mr A McCooley BA MSc MRTPI



*Elaine Kinghan*

**Senior Commissioners**

Mr A Beggs BSc MSc MRTPI  
 Ms R Daly BSc MSc MRTPI  
 Ms J de-Courcey BSc MSc LLB MRTPI  
 Ms M Jones BA BArch ARIBA  
 Mr B Martin BSc MRTPI  
 Mr A Speirs BSc (Env Sc) MSc MRTPI



*Trevor Rue*

**Commissioners**

Mrs P Boomer BSc DipTP MRTPI  
 Mr D Hannon BA DipTP MRTPI  
 Ms H Fitzsimons BSc DipTP MRTPI  
 Mrs B McGlinchey BSc MA MRTPI  
 Ms D McShane BA MTP MEPPA MRTPI  
 Ms D O'Neill BSc DipTP MRTPI  
 Ms Pamela O'Donnell BSc Dip TP MRTPI  
 Mr Mark Watson BSc Dip TP MRTPI



*Marion McCabe*

**Panel Commissioners**

Mr A Allen BA MA MRTPI  
 Mr M Culshaw MA MA MRTPI  
 Mr A Dale BA MA MRTPI  
 Mr M Evans BA MA Mphil MRTPI  
 Mr I Fernie MA MSc MRTPI  
 Ms S Glover BA MCD MRTPI  
 Mr D Hainsworth LLB FRSA Solicitor  
 Ms S Hesketh BSc MRTPI  
 Ms S Holden BSc MSc MICE MRTPI FIHT  
 Mr N Howard BSc MBA MIM MRTPI  
 Mr M Hurley BA DipTP MRTPI  
 Mr D McCoy Dipl Arch FRTPI FRIAI



*George Scott*



*Aidan McCooley*

**Membership of WAC**

All Commissioners except Panel Commissioners



*Sean O'Hare*

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**Chief Administrative Officer**

Mr C Purvis

**Office Manager**

Miss L Braniff

**Team Leaders**

Miss N McAleese  
Miss L McQuillan  
Mr C Morgan  
Mrs A White

**Case Officers**

Miss Y Adgey  
Mrs E English  
Mrs M English  
Mrs I Garrett  
Miss D McFerran  
Mr R Mageean  
Miss S Marcus  
Miss J Millar  
Mr J Nelson

**Administrative Assistants**

Mr R Beech  
Mr J Scott

**Personal Secretary  
to Chief & Deputy Chief  
Commissioners**

Mrs S Quinn

**Typist**

Mrs E McShane



*Ciaran Purvis*



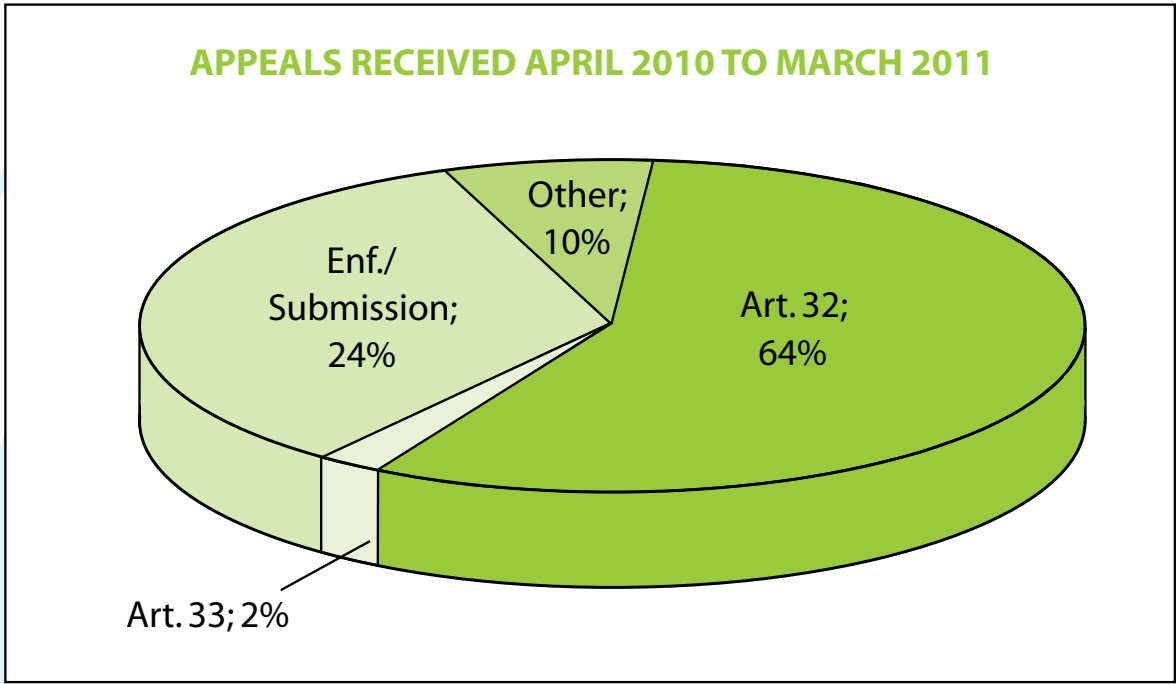
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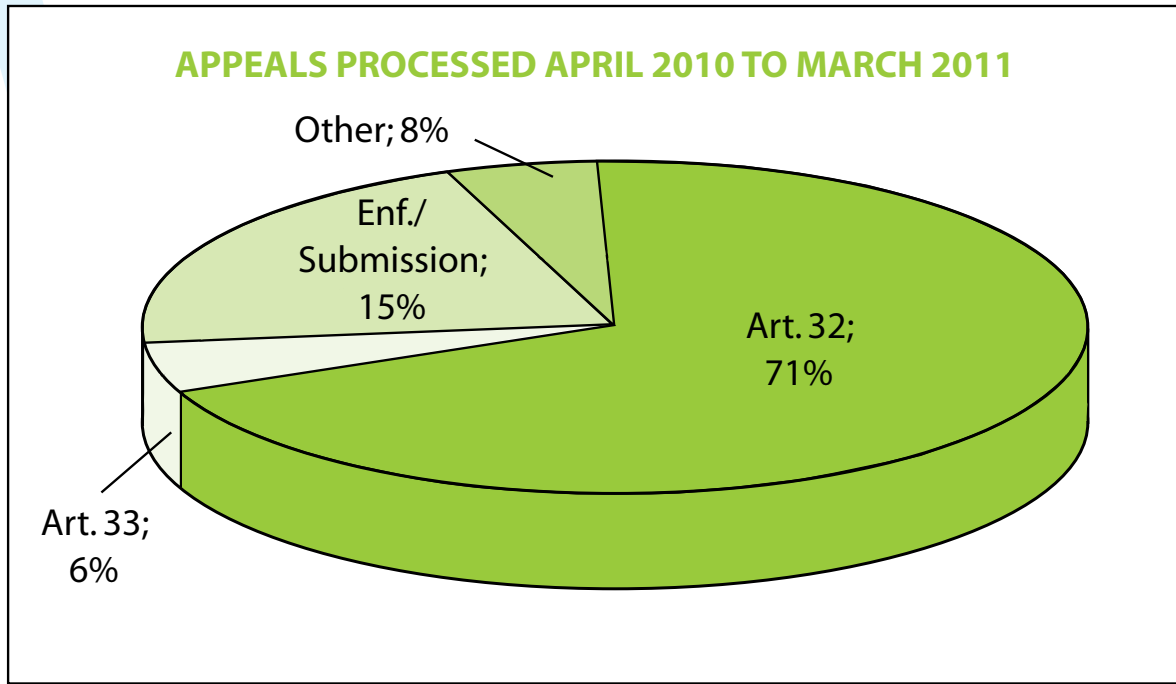
# Analysis of Casework

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**APPEALS RECEIVED APRIL 2010 TO MARCH 2011**



**APPEALS PROCESSED APRIL 2010 TO MARCH 2011**



The following tables set out detailed information on the volume of casework of the Planning Appeals Commission, the means of processing appeals, the median clearance times achieved and the appellant's success rate for each procedure.

Year		2006/07	2007/08	2008/09	2009/10	2010/11
Appeals received	Article 32	2,280	1,308	306	299	277
	Article 33	416	35	29	29	9
	Enforcement/ Submission	46	115	118	132	105
	Other	23	35	62	55	44
<b>TOTAL</b>		2,765	1,493	515	515	435

Appeals Received - 2010/11	
Other - Breakdown	Number
Adverts	16
Roads	4
Industrial Pollution	2
Listed Building	2
Tree Preservation Order	1
Lawful Development Certificates	11
Environment Order	4
Waste and Contaminated Land	4
<b>TOTAL</b>	<b>44</b>

The Commission received 277 Article 32 appeals, continuing the trend on intake since 2008/09. The intake of Article 33 appeals (appeals in default of a decision by DOE) decreased significantly to just 9 for the year. The number of appeals relating to Enforcement Notices and Lawful Development Certificates decreased slightly but still remained fairly high.

During 2010/11 147 appeals were eventually withdrawn before a decision could be issued, this high number equates to 18% of the appeals processed. The processing of appeals which are eventually withdrawn is wasteful of Commission resources and illustrates the need for appellants to consider more carefully whether to submit an appeal.

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Year		2006/07	2007/08	2008/09	2009/10	2010/11
Appeals Decided	Article 32	781	787	1,221	1,108	481
	Article 33	153	232	84	40	43
	Enforcement/ Submission	21	35	79	84	101
	Other	18	11	27	72	56
<b>TOTAL</b>		973	1,065	1,411	1,304	681

Appeals Decided - 2010/11	
Other - Breakdown	Number
Adverts	34
Roads	1
Industrial Pollution	2
Listed Building	3
Lawful Development Certificates	15
Tree Preservation Order	1
<b>TOTAL</b>	<b>56</b>

The Commission decided 681 appeals. The total includes 118 appeals about Enforcement Notices, Lawful Development Certificates and 'environmental' appeal functions. These appeals are time consuming to determine as they raise complex legal and technical issues.

Year		2006/07	2007/08	2008/09	2009/10	2010/11
Appeals Decided by Method of Processing	Formal Hearing Decisions	22	4	5	4	4
	Informal Hearing Decisions	248	158	197	206	238
	Written Representations with Accompanied Site Visit Decisions	262	209	205	260	187
	Written Representations no Accompanied Site Visit Decisions	441	694	1,004	834	252

The proportion of appeals decided following the exchange of Written Representations has decreased from 84% (2009/10) to 64% (2010/11). 25% of appellants choose the Informal Hearing procedure.

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Year	2006/07	2007/08	2008/09	2009/10	2010/11
<b>Appeals in Hand at Year's End</b>	2,615	2,834	1,651	679	291

The Commission has been successful in reducing the backlog to 291 appeals. A large backlog had developed over the 3 years 2005/06 to 2007/08.

Year		2006/07	2007/08	2008/09	2009/10	2010/11
<b>Appeals Allowed</b>	<b>Article 32</b>	263	239	409	452	169
	<b>Article 33</b>	85	83	47	21	16
	<b>Enforcement/ Submission/LDC</b>	5	10	23	21	24
	<b>Other</b>	9	2	8	22	17
	<b>All Decisions % Allowed</b>	362 37%	334 31%	487 35%	516 40%	226 33%

Year			2006/07	2007/08	2008/09	2009/10	2010/11
<b>Appeals Allowed by Method of Processing</b>	<b>Formal Hearing</b>	<b>Total</b>	22	4	5	4	4
		<b>No &amp; % Allowed</b>	16 73%	2 50%	3 60%	3 75%	4 0%
		<b>Allowed</b>					
	<b>Informal Hearing</b>	<b>Total</b>	249	158	197	206	238
		<b>No &amp; % Allowed</b>	83 33%	43 27%	66 34%	78 38%	80 34%
		<b>Allowed</b>					
	<b>Written Reps with Accompanied Site Visit</b>	<b>Total</b>	262	209	205	260	187
		<b>No &amp; % Allowed</b>	91 35%	66 32%	69 34%	112 43%	65 35%
		<b>Allowed</b>					
	<b>Written Reps no Accompanied Site Visit</b>	<b>Total</b>	440	694	1004	834	252
		<b>No &amp; % Allowed</b>	172 39%	223 32%	349 35%	323 39%	82 33%
		<b>Allowed</b>					

Every appeal site is visited by the Commissioner who decides the appeal. The Commission considers that the exchange of Written Representations, without an Accompanied Site Visit, is an appropriate procedure to determine many appeals presently being considered. As each appeal is decided on its particular facts,

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there is no connection between the appeal outcome and the processing method selected. If an appellant or the Department of the Environment selects the Written Representation procedure and the Commissioner considers that, to ensure adequate investigation, an Accompanied Site Visit or hearing is required, this will be arranged by the Commission.

	Year	2006/07	2007/08	2008/09	2009/10	2010/11
<b>Appeal Decisions (Excluding Enforcement) Median Times and % within set periods</b>	<b>Formal Hearings % within 30 weeks</b>	0%	0%	0%	0%	0%
	<b>Informal Hearings % within 27 weeks</b>	0%	0%	1%	0%	0.6%
	<b>Written Representation % within 24 weeks</b>	7%	0%	0%	1%	2.7%
	<b>All Appeals Median Time (Weeks)</b>	41	60	89	102	52
	<b>Formal Hearings Median Time (Weeks)</b>	57	84	114	132	131
	<b>Informal Hearings Median Time (Weeks)</b>	46	63	93	118	75
	<b>Written Representations with Accompanied Site Visit Median Time (Weeks)</b>	42	56	92	115	60
	<b>Written Representations with no Accompanied Site Visit Median Time (Weeks)</b>	36	60	89	96	43

The Planning and Water Appeals Commissions both generally consider appeals in the chronological order in which they are submitted. The backlog which developed has resulted in a number of appeals awaiting determination for an unacceptably long period. Because of the availability of Commissioner resources, the procedure selected can affect the time taken by the Commission to determine the appeal. The Commission provides information on its website about the appeals which it is currently processing by procedure.

	Year	2006/07	2007/08	2008/09	2009/10	2010/11
<b>Enforcement Appeal Decisions Median Times and % within set periods</b>	Formal Hearings % within 32 weeks	0%	50%	0%	0%	0%
	Informal Hearings % within 29 weeks	0%	22%	6%	7%	9.7%
	Written Representation % within 26 weeks	0%	7%	13%	21%	13.8%
	All Appeals Median Time (Weeks)	49	38	50	39	38
	Formal Hearings Median Time (Weeks)	47	38	88	106	0
	Informal Hearings Median Time (Weeks)	51	39	51	41	38
	Written Representations with Accompanied Site Visit Median Time (Weeks)	0	40	43	34	36
	Written Representations with no Accompanied Site Visit Median Time (Weeks)	53	33	47	40	38

The Commissions have a procedure for prioritising casework which is published on the website. The Commissions give priority to appeals against Enforcement Notices as these allege breaches of planning control. While these appeals can be complex and therefore take longer to determine, the priority accorded is reflected in the lower median times when compared with other appeals.

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## CASELOAD - WATER APPEALS COMMISSION

Year	2009/10	2010/11
Water Appeals Received	21	5
Water Appeals Withdrawn	12	2
Water Appeals Decided	6+3 (Not Valid)	3

There was a notable decrease in appeal activity in 2010/11 compared to previous years with almost half of the appeals withdrawn before a decision was issued.

## REFERRED CASELOAD

### Referred Plans

Draft Magherafelt Area Plan - the Commission's report was delivered to the Department of the Environment in January 2011.

Draft Belfast Metropolitan Area Plan - 2 sections of the Commission's report have been delivered to the Department of the Environment, the Strategic Plan Framework in March 2011 and Strategic Retail Issues in January 2009. The remaining sections will be delivered in 2011.

Draft Banbridge, Newry and Mourne Area Plan - The public examination of objections was completed in March 2010 and the Commissions' report will be delivered to the Department of the Environment in 2011/12.

Draft Northern Area Plan - this Plan was referred in September 2010. The Public Examination of Strategic Issues will commence in September 2011.

In 2010/2011, 10 full time Commissioners have been involved in considering objections to draft development Plans; this will continue for most of 2011/12.

### Major Planning Applications (Article 31)

Since 2008/2009, the Department of the Environment has referred 16 major proposals to the Commission. In 2010/2011, the Commission has been processing the following applications.

- Retail proposal at Sprucefield.
- Two retail proposals in Newtownards.
- Retail proposal, Antrim.
- Retail proposal, Castlereagh Road, Belfast.
- Office proposal, Londonderry.
- Retail proposal, Strabane.
- Runway extension, George Best Belfast City Airport.

The retail proposals in Antrim and Strabane were withdrawn by the applicants when the Commission set out the arrangements for the hearings and the submission of written evidence. The public inquiry considering the retail proposal at Sprucefield opened in June 2010 but had to be adjourned. At a pre-Inquiry meeting in January 2011 the Department of the Environment temporarily withdrew the request to conduct an Inquiry into the two retail proposals in Newtownards.

The delays in these Inquiries are due to issues about the adequacy of the environmental information submitted with the applications. This matter has also delayed the processing of the application for the runway extension at George Best Belfast City Airport. It is the statutory responsibility of the Department of the Environment to ensure that the environmental information relating to an application is complete before that application is referred to the Commission. Late withdrawals of applications and delays in public inquiries and hearings are usually due to factors outside the control of the Commission; however they are very wasteful of Commission resources. The Commission therefore expects applicants, but particularly the Department of the Environment, to address these issues to ensure the waste of limited Commission resources is avoided.

To date the Department has not indicated when consideration of the Sprucefield and Newtownards proposals can be resumed. While, in late March 2011, the Department indicated that all necessary information was now collected in relation to the proposed runway extension for George Best Belfast City Airport the applicant decided to submit further environmental information and the Commission's processing of the application had to be suspended.

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A hearing to consider the retail proposal, Castlereagh Road, Belfast was held on 19 and 20 April 2011. The Commission’s report was delivered to the Department of the Environment on 28 April 2011. A hearing was held for the office development in Londonderry in May 2011 and the report will be delivered to the Department shortly.

As resources become available, the Commission will commence the processing of two retail proposals in Lisburn. The Department of the Environment formally referred the NIE Interconnector proposal in April 2011, these papers are currently being checked.

The Commission has indicated to the Department of the Environment that it will not allocate resources to process major applications which were submitted a number of years ago and not updated or when there is uncertainty about whether the development applied for will be pursued, especially when a more recent application has been submitted to the Department.

## COMPLAINTS AND JUDICIAL CHALLENGES

Complaints	Total	No. Justified
09/10	40	7
10/11	30	2
<b>Overall Total</b>	<b>70</b>	<b>9</b>
Judicial Reviews	Total	Successful Challenges
09/10	10	6
10/11	6	3
<b>Overall Total</b>	<b>16</b>	<b>9</b>
Intake of Cases	Appeals	Referred Cases
09/10	515	4
10/11	440	9
<b>Overall Total</b>	<b>955</b>	<b>13</b>

The Commission’s target is to ensure that justified complaints and successful High Court challenges do not exceed 1.5% of the intake of cases over a rolling two year period. As the figure for 2010/2011 was 1.9%, this target was not met. In 2010/2011, the Commissions issued 684 decisions, of which 3 were quashed with the Commissions’ agreement when challenged in the High Court.

In 2010 the Independent Complaints Audit Panel reviewed the complaints received from 2007 to 2009. The Panel’s report was published on the Commission website in December 2010. The Panel is currently reviewing the complaints received in 2010/2011. When available, its report will be published by the Commission. Most of the 30 complainants in 2010/2011 were dissatisfied with the decision in the appeal.

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# **Performance Measures & Targets**

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### **APPEALS - EXCLUDING ENFORCEMENT**

1. We will decide 80%\* of appeals by formal hearing within 30 weeks.
2. We will decide 80%\* of appeals by informal hearing within 27 weeks.
3. We will decide 80%\* of appeals by written representations within 24 weeks.

\* Excluding appeals delayed to facilitate the appellant.

### **PUBLIC EXAMINATIONS/INQUIRIES/HEARINGS**

4. If a public meeting is required we will provide a Commissioner to conduct such a meeting in 80% of cases within 16 weeks of the receipt of the request and all relevant documents from the Department.
5. If a public meeting is not required we will provide a Commissioner to conduct 80% of examinations/inquiries/hearings within 24 weeks of the receipt of the request and all relevant documents from the Department.
6. We will deliver 90% of all reports on examinations/inquiries/hearings to Departments by the indicative date announced at the end of the public proceedings.

### **COMPLAINTS**

7. We will acknowledge all written complaints within 7 working days of receipt and issue full or holding replies to 95% of all complaints within 4 weeks of receipt.

### **EFFICIENCY**

8. We will continue to explore measures to increase the efficiency and effectiveness of the service provided.
9. We will continue to promote the use of the written representation procedures.

### **QUALITY**

10. We will, through effective training and development, ensure that justified complaints and successful High Court challenges do not exceed 1.5% of the intake of cases over a rolling two-year period.

### **PERFORMANCE**

Though the backlog of appeals awaiting determination has been addressed and the median times to determine appeals continue to reduce, the Commissions have only marginally increased the percentages of appeals decided within targets. The Commissions determine most appeals in the chronological order in which they are submitted and the percentage of appeals decided within targets should improve significantly in 2011/12. As justified complaints and successful judicial review challenges amounted to 1.9% of the intake of cases over the last 2 years, the Commissions just failed the quality target.

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# **Financial Statement**

## Running Costs

	2009/2010		2010/2011	
		%		%
Commissioners' Salaries/Fees	£1,672,725	61.16	£1,676,553	66.8
Administrative Staff Salaries	£472,570	17.28	£478,867	19.08
Overtime	£754	0.02	£1,740	0.07
Travel and Subsistence	£72,998	2.67	£48,458	1.93
Accommodation Charges	£107,271	3.92	£81,207	3.24
Advertising	£58,670	2.15	£56,168	2.24
External Training	£7,314	0.27	£5,669	0.23
Legal Fees	£163,729	5.99	£33,129	1.32
Postage & Telephones	£25,166	0.92	£24,020	0.96
Electricity	£14,378	0.52	£15,682	0.62
Library	£7,572	0.27	£8,333	0.33
Stationery/Printing	£20,606	0.75	£15,295	0.61
Contract Cleaning	£10,400	0.38	£10,576	0.42
Office Equipment	£3,832	0.14	£2,265	0.09
Hospitality	£6,191	0.23	£941	0.04
Incidental Expenses	£98	0.04	£623	0.02
Management Consultancy	£65,896	2.40	£41,924	1.67
Refund of Fees	£24,531	0.89	£8,189	0.33
<b>Total</b>	<b>£2,734,701</b>	<b>100</b>	<b>£2,509,639</b>	<b>100</b>

RECEIPTS	2010/2011
Appeal Fees	£125,960
Photocopying Charges	£805
<b>TOTAL</b>	<b>£126,765</b>





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