

Response of the Public Services Ombudsman for Wales to the Law Commission's Consultation on Planning Law in Wales (Scoping Paper)

1. I welcome the opportunity to respond to the Law Commission's consultation on its Planning Law in Wales scoping paper. As Public Services Ombudsman for Wales I investigate complaints made by members of the public that they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction. Bodies in my jurisdiction providing services in relation to planning include local authorities, Planning Inspectorate Wales and relevant tribunals. I receive a significant number of complaints about planning; it is the third most complained about service area after health and housing. It is in this context, therefore, that I am responding to the consultation.
2. Specific points that I wish to make on the consultation document are as follows:

- **Chapter 3 - Case for Simplification – Question 3-1**

I welcome the proposal to consolidate and simplify planning law in Wales, with a view to creating a new Planning Code. Our investigation of a complaint entails us having to identify the relevant legislation applicable to the subject matter in question. My staff invariably find it very challenging to locate Welsh planning law and we believe that codification would be a great help.

However, it is equally important during our investigations to be able to identify what the law was at any given point in time (that is, what the law was when the problem we are investigating occurred). Therefore, it will be important to have an archive where previous 'editions' of the Code can be easily found.

- **Chapter 4 - Scope of the First Part of a Planning Code – Remedies**

Paragraph 4.41 - I wish to point out that there is no absolute restriction on the Public Services Ombudsman for Wales accepting a complaint when a remedy is available through a court of law. The Ombudsman may exercise discretion to accept and investigate such a complaint if it is concluded that the circumstances of the case warrant this.

Paragraph 4.44 and 4.45 – These paragraphs are confusing and the Ombudsman's role and powers in relation to remedies requires clarification. For example, it is incorrect to suggest that 'there is no legislative foundation in planning for application to the Ombudsman ...'. Planning is a function of a local authority and, therefore, it falls within the jurisdiction of the Public Services Ombudsman for Wales under the Public Services Ombudsman (Wales) Act 2005. It might also be helpful to explain that the Ombudsman may not accept a complaint if a right of appeal before a tribunal is available; although again the Ombudsman may exercise discretion to accept and investigate a complaint if the circumstances warrant this.

- **Chapter 5 – Technical Reform – Question 5-1**

I agree that the technical reform as discussed in this Chapter would be a sensible way forward.

- **Chapter 7 – Codification of Case Law**

Whilst I believe it would be useful if codification of case law formed part of the wider codification exercise, with everything in one place, I wish to strike a cautionary note. It is my view that if this approach is to be undertaken it will be important that the Code is updated frequently. This in turn means that it will need to be properly resourced to ensure that this happens. Care will also need to be taken to ensure that whatever is included in the Code is generally agreed to reflect the definitive position. Therefore, where there is any ambiguity surrounding case law and/or the matter has potential to evolve further, this should not be included.

I hope that you find this response of assistance in scoping your project.

Public Services Ombudsman for Wales
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