

RULES OF THE WATERWAYS OMBUDSMAN SCHEME

These Rules have been made by British Waterways Board ("British Waterways") to establish and maintain a Waterways Ombudsman Scheme. The purpose of the Scheme is to make available a Waterway Ombudsman, who is independent and accessible, to investigate in an efficient, effective and fair manner complaints against British Waterways or any of its subsidiaries. These Rules have been made with the intent that the Scheme shall meet the criteria for the recognition of the office of Waterways Ombudsman as a full member of the British and Irish Ombudsman Association.

THE WATERWAYS OMBUDSMAN COMMITTEE

1. There shall be a Waterways Ombudsman Committee ("the Committee") whose purpose is to oversee the operation of the Waterways Ombudsman Scheme and the independence and accessibility of the Waterways Ombudsman.

Constitution and Membership

2. The Committee shall comprise eight persons appointed as follows:
 - a) Two members appointed by British Waterways;
 - b) Three members appointed by the British Waterways Advisory Forum;
 - c) Two members who meet the criteria for non-alignment set out below, appointed by the Chairman of the Committee; and
 - d) One member appointed by the Committee to act as its Chairman, subject to and in accordance with the provisions of the next paragraph.
3. The inaugural Chairman shall be Professor Jeffrey Jowell QC who shall vacate that office not later than 30 April 2008. Thereafter the Chairman shall be appointed by the Committee acting with the agreement of not less than six of its members (which may include the retiring Chairman, save where that person is seeking re-appointment). The Chairman may not be a person who is, or was at any time, a member or employee of British Waterways or any of its subsidiaries.
4. Any appointment to the Committee may be for a term not longer than three years. Any member of the Committee shall be eligible to be re-appointed for a second term but no longer.
5. To meet the criteria for non-alignment, the member:
 - a) shall not be, or ever have been, a member or employee of British Waterways, or any of its subsidiaries, nor have a material association with such a person or those bodies; and
 - b) shall not have, or have had, a material association with any business having an interest in or operations on, any waterways owned or managed by British Waterways; and
 - c) shall not be, or ever have been, an office-holder, employee or committee member of any organisation or body representing persons or businesses with an interest in any waterways owned or managed by the British Waterways.

6. The quorum for any meeting of the Committee shall be five. Except where provided otherwise in these Rules, the Committee may decide any question by agreement of the majority of those present at any meeting of which due notice has been given (or has been waived by those not attending). Subject as aforesaid, the Committee may regulate its own procedure.

Appointment, and removal from office, of the Waterways Ombudsman

7. The Committee shall have the exclusive power to appoint, and to remove from office, the Waterways Ombudsman.
8. The Committee shall set the terms of appointment of the Waterways Ombudsman and, in deciding the level of fees or other remuneration payable, shall consult with, and pay proper regard to, any representations made by British Waterways in its capacity as the body responsible for funding the Scheme. The Committee shall nevertheless ensure that the level of fees or other remuneration payable to the Waterways Ombudsman are sufficient and appropriate to maintain in office a person of appropriate calibre.
9. The Committee shall make appointments to the office of Waterways Ombudsman through a process of open competitive selection (subject only to the provisions of the next paragraph on reappointment), and on merit by reference to the knowledge, skill and experience that is necessary and desirable for service in that office.
10. Appointments to the office of Waterways Ombudsman shall normally be for a minimum of three years and a maximum of five years (and in any event of sufficient duration not to undermine independence) and an incumbent may be reappointed for a second term of similar duration (but no other) without competitive selection.
11. The Committee may remove an incumbent from the office of Waterways Ombudsman prior to the expiry of the term of appointment on the grounds of mental or physical incapacity; material breach of these Rules or of the terms of appointment; or on other substantial grounds arising from the acts or omissions of the incumbent whereby the integrity or independence of that person has been significantly compromised.
12. The Committee may not resolve to remove an incumbent from the office of Waterways Ombudsman except with the agreement of six or more members of the Committee. In reaching such a decision the Committee shall ensure it acts fairly and reasonably in all the circumstances.

Other Duties of the Committee

13. The Committee shall receive reports from the Waterways Ombudsman, and keep the operation of the scheme created by these Rules under review to the extent that at all times it is able to be satisfied:
 - a) that the Scheme meets its purposes as set out in the introduction to these Rules; and
 - b) that the funding by British Waterways of the office of the Waterways Ombudsman and of the other activities required by these Rules is sufficient for their efficient and effective operation..
14. If at any time the Committee is not satisfied as to the matters referred to in the previous paragraph it may report that dissatisfaction to the Chairman and Board Members of

British Waterways. If, having allowed an adequate period for a remedy to be effected, the Committee remained dissatisfied it may report that continuing dissatisfaction to the Waterways Minister and Scottish Ministers or make a public declaration of such dissatisfaction or both.

15. The Committee shall receive reports from British Waterways or the Waterways Ombudsman or both on the method and adequacy of publicising the availability of the Scheme to potential complainants.
16. The Committee shall publish an annual report which may be published together with the annual report of the Waterways Ombudsman.
17. The Committee shall not entertain or consider any appeal from a decision of the Waterways Ombudsman nor seek in any manner to interfere with the independence of the Waterways Ombudsman with regard to the investigation or determination of any complaint.

THE WATERWAYS OMBUDSMAN

Principal Powers and Duties

18. The principal powers and duties of the Waterways Ombudsman (“the Ombudsman”) shall be:
 - a) to receive complaints of injustice suffered by a complainant that arise from maladministration or unfair treatment by British Waterways, or any its subsidiaries, in carrying out their activities;
 - b) to determine whether such complaints are eligible to be considered under these Rules; and
 - c) subject to these Rules:
 - i) to investigate such complaints and/or facilitate their resolution or withdrawal; and
 - ii) if not resolved or withdrawn, to determine whether the complaint is well founded; and if so,
 - iii) to make (to the extent the Ombudsman considers necessary and appropriate) such recommendations or award as the Ombudsman considers to be fair and reasonable in all the circumstances.

Procedure

19. The Ombudsman shall decide whether or not a complaint is an eligible complaint under these Rules and may review such decision in the light of representations (if any) from the complainant and the body named in the complaint. The Ombudsman shall give reasons in writing and within a reasonable time for such decision.
20. Subject to other provisions of these Rules, the Ombudsman shall have discretion to decide the procedures to be adopted in considering and investigating complaints.
21. The Ombudsman may refuse to consider a complaint, or stop or suspend consideration of a complaint at any stage during its investigation on any grounds that are fair and reasonable including (but without limitation) where:

- a) it appears to the Ombudsman that no worthwhile outcome can be achieved;
- b) it appears to the Ombudsman that the complaint does not raise any substantial issue or the complainant has not suffered injustice involving loss, damage, distress or inconvenience;
- c) it appears to the Ombudsman that it is more appropriate that the complaint, or part of a complaint (including resolution of any dispute of facts relevant to a complaint), be dealt with by a court, by a regulatory body, under another independent complaints or conciliation procedure or under an arbitration procedure; and/or
- d) if it appears to the Ombudsman that the complaint is being pursued in an unreasonable manner or is frivolous or vexatious, or seeks to raise again and unreasonably in the opinion of the Ombudsman, matters that have already been decided upon by the Ombudsman, a predecessor in office or in another appropriate forum.

22. In making any decision on a complaint (including any recommendation or award under these Rules), the Ombudsman shall have regard to:

- a) the law;
- b) any relevant and generally accepted Code of Practice applicable to the subject-matter of the complaint; and
- c) any other relevant matter

but shall not be bound by any legal rule of evidence or by any previous own decisions or those of any predecessor in office.

Eligible Complaints

23. The Ombudsman shall not consider a complaint from a complainant who is not an eligible complainant. An eligible complainant is:

- a) a private individual not acting in the course of a business;
- b) any natural or legal person acting in the course of a business provided that business (or the group of which it is part) has an annual turnover of less than £1m at the time the cause of the complaint was first brought to the attention of the body subject to the complaint;
- c) any registered charity or any trust or unincorporated body whose annual income (or the annual income of any group of which it is part) is less than £1m at the time the cause of the complaint was first brought to the attention of the body subject to the complaint; or
- d) any body or organisation that is a member of the British Waterways Advisory Forum, without any limitation by reference to its financial resources, but provided the subject matter of the complaint concerns injustice suffered by the body or organisation itself, or by a significant part of the membership of that body or organisation.

24. Where a complaint concerns the observance or non-observance of the Marinas Protocol by British Waterways, the requirements for being an eligible complainant in relation to that complaint shall be applied without any limitation by reference to the financial resources of the complainant. For the purposes of this paragraph, 'Marinas Protocol' refers to the document entitled "British Waterways, Protocol for Marina Business"

published by British Waterways in March 2004 or any revision or replacement of that document.

25. The Ombudsman may only consider a complaint where:

- a) the complaint has been referred to and has completed the final level of the internal complaints procedure of the body that is subject to the complaint (or has been deemed to have completed that procedure by failure in its operation),
- b) the complaint is referred to the Ombudsman within 6 months of the conclusion, or of the deemed conclusion, of the final level of such internal complaints procedure,
- c) the act or omission giving rise to the complaint, first came to the attention of the complainant (or would have done if acting reasonably) not more than 12 months before the complainant first made the complaint in writing to the body subject to the complaint, and
- d) in any event the act or omission giving rise to the complaint first occurred not more than 36 months before the complainant first made the complaint in writing to the body subject to the complaint;

Provided that none of the provisions of this paragraph shall prevent the Ombudsman from considering, in connection with a substantive complaint, a complaint about the handling of that substantive complaint.

26. The Ombudsman shall not consider a complaint, or shall cease to consider a complaint, if the issue or issues to be considered are being considered by, or have been determined by, a court, tribunal or other judicial body or regulatory authority

27. The Ombudsman shall not consider any complaint concerning the current or former employment of any person (including the complainant) by British Waterways or by the body subject to the complaint.

Provision of Information

28. The Ombudsman may require British Waterways or any of its subsidiaries to disclose any documents and to provide any information which in the view of the Ombudsman relates to the complaint. If that body possesses such information, it shall as soon as reasonably practicable disclose it to the Ombudsman (unless it certifies to the Ombudsman that the disclosure of such information would place it in breach of its duty of confidentiality to a third party whose consent has been refused after best endeavours had been used to obtain such consent).

29. If any party to a complaint supplies information to the Ombudsman and requests that the Ombudsman treat it as confidential, the Ombudsman shall not disclose that information to any other party without the consent of the party who has made the confidentiality request, provided that:

- a) maintaining the confidentiality of such information does not impede the Ombudsman's ability to make a fair and reasonable determination of the complaint; and
- b) the Ombudsman is satisfied that the confidentiality request has been made in good faith, and for good reason and not with the aim of impinging on any principles of natural justice.

Recommendations and Awards

30. Without prejudice to the generality of paragraph 18, and subject to the next paragraph, the Ombudsman may make an award that in the opinion of the Ombudsman is appropriate:
- a) to compensate the complainant for loss or damage suffered by the complainant by reason of the acts or omissions of the body against which the award is made;
 - b) to reimburse the complainant for incidental expenses reasonably incurred by the complainant in making and pursuing the complaint; and/or
 - c) to compensate the complainant for distress and inconvenience suffered by the complainant by reason of the acts or omissions of the body against which the award is made, save always that the Ombudsman shall not make an award for distress or inconvenience where the cause of complaint relates to commercial or business activities of the complainant.
31. The Ombudsman shall not make an award in relation to any complaint (or in relation to any series of complaints by that complainant that the Ombudsman considers it would be fair in all the circumstances to treat as one consolidated complaint) of more than £100,000.
32. Any recommendations and/or award shall be in writing and shall include the Ombudsman's reasons for making the recommendations or award.

Annual Report

33. The Ombudsman shall publish an annual report which shall include a summary of the eligible complaints received and answered in the previous year, the recommendations and awards made by the Ombudsman and any issues of more general significance arising from individual complaints.

ROLE OF BRITISH WATERWAYS

Funding of the Scheme

34. British Waterways shall pay all proper costs of the Scheme, including the Waterways Ombudsman's fees (or other remuneration) and expenses; all costs of publicising the Scheme; and all reasonable expenses and costs of the Committee. The Waterways Ombudsman may at any time bring to the attention of the Committee any apparent shortcoming in the funding of the Scheme.

Implementation of Recommendations and Awards

35. On the making of any recommendations or of an award by the Waterways Ombudsman British Waterways shall (or shall ensure that the relevant subsidiary shall) as soon as reasonably practicable take such steps as are necessary to comply with the recommendations or to make payment of the award and shall in any event report to the Waterways Ombudsman within 20 working days what steps it has taken or is in the course of taking.

INTERPRETATION

36. In these Rules:

- a) "Award" means compensation in money or money's worth.
- b) "Subsidiary" has the meaning given by section 736 Companies Act 1985.

Dated 24 November 2005