



Summary of Case No 181 – reluctance to give freight operator commitment to comply with statutory maintenance obligations

1. The complainant runs a business involved in transporting freight on canals and rivers. He had the possibility of obtaining a contract to move freight on part of the river Severn. However that would depend, amongst other things, on the river being maintained to a sufficient depth. He complained that British Waterways had wrongly failed either to maintain the East Channel of the Severn in Gloucester in a suitable condition for his commercial vessels to use, or to give him an adequate assurance that they would do that once he was ready to use the channel.
2. Under the Transport Act 1968 British Waterways have a duty to maintain the main channel of this part of the river in a suitable condition for use by commercial freight carrying vessels. They had never disputed that. Instead they had raised various other issues in response to the complainant's concerns. They referred initially to the fact that that part of the river, they said, was used only once for freight after previous dredging and expressed reluctance to dredge again without a certainty of use. Whilst British Waterways' legal obligations are not dependent on the likelihood of use, I would not have pursued a complaint such as this unless it was from a complainant with a real prospect of use: as otherwise there would be unlikely to be any significant injustice.
3. I saw no benefit to the complainant from my pressing British Waterways to dredge the river until he was ready to use it regularly (especially as I understood that it could silt up again quite quickly). But I could see an injustice to him if British Waterways were not prepared to give a commitment to maintain it to a statutory level once he was ready: without that it would probably not be worth him devoting time and money to any other necessary arrangements for the contract. The development of waterborne freight traffic in that area, which British Waterways had spoken proudly about previously, would be probably then be lost. I therefore sought a reassurance that necessary works would be done when required. However, when I first approached them, they were not ready to give that commitment.

4. Instead they did then commit to dredging to a level suitable for pleasure craft: but that would be of no benefit to the complainant, as he required a greater depth. At the same time they made what appeared to be a clear statement that they would be approaching the Waterways Minister to ask him to consider removing the commercial classification from that part of the river (which would mean that it did not have to be maintained at the same depth). However when I asked for a timetable for that process, they made a further change of tack and referred to 'confusion' about the question of a Ministerial order and said there was no timetable.
5. I could appreciate that freight traffic did not generate very significant amounts of income for British Waterways and that maintaining waterways in a suitable condition for freight vessels could be quite costly for them. However not only were there very much wider issues involved than British Waterways' own finances, but they did have a statutory obligation to maintain the main channel of the river: without the intervention of the Minister that obligation was paramount. I would not condone failure to comply with a statutory obligation, or in this case failure to commit themselves to complying with a statutory obligation, which was causing an injustice to the complainant. Whilst that obligation existed, I regarded British Waterways' failure to give the complainant a suitable commitment to maintain the channel to the appropriate standard as maladministration causing him an injustice.
6. In a draft report, I recommended that British Waterways gave the complainant the commitment that when he needed to use it for regular freight traffic, they would maintain the relevant part of the river Severn in a suitable condition for use by freight vessels.
7. I was very pleased that, on seeing the draft report, British Waterways reviewed their position at the highest level, and said they would now give the commitment I sought. They added the proviso that they maintained the right to seek action by the Minister: I had never suggested that they did not have such a right.

Hilary Bainbridge
Waterways Ombudsman

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