




THE WATERWAYS
OMBUDSMAN



Annual Reports of

The Waterways Ombudsman
Committee

and

The Waterways Ombudsman

for 2009-10



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ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN COMMITTEE FOR 2009-10

The Committee and the Ombudsman

1. This is the fifth annual report of the Committee, covering the period April 2009 to March 2010. The Committee has agreed that, as last year, the annual report should be published electronically on the scheme's website, with paper copies being provided when requested.

2. The Committee oversees the operation of the Waterways Ombudsman Scheme and the independence and accessibility of the Waterways Ombudsman. The main roles of the Committee are:

- the appointment (or removal from office) of the Ombudsman;
- keeping the operation of the Scheme under review, both to ensure that it meets its purposes and that it is adequately funded;
- to receive reports on the method and adequacy of publicising the Scheme; and
- to publish an annual report.

(Issues relating to the investigation or determination of complaints are matters for the Ombudsman alone, and the Committee has no part to play in those.)

3. The Committee has eight members. Of those, three (including the current Chairman) are independent and three are appointed by the British Waterways Advisory Forum (BAAF) - ie from groups, such as users and businesses, with interests in the waterways. The remaining two members are appointed by British Waterways. Full details of the membership of the Committee are given at the end of this report. Mr Miles Smith's term of office ended in March

2010. The Committee were very grateful for the contribution he made to their work.

4. The Committee met once during the year, in November 2009. Minutes of Committee meetings are available on the Waterways Ombudsman scheme's website at www.waterways-ombudsman.org.

The Scheme

5. The Committee considered reports from the Waterways Ombudsman about the operation of the Scheme. Those covered matters including:

- complaint workload;
- appointment of assistants;
- contacts with stakeholders;
- publicity;
- progress on plans for 2008-09 and future plans;
- policies and procedures;
- funding of Scheme.

6. No significant issues of concern arose and the Committee remained satisfied that the Scheme was meeting its purposes as set out in the Rules.

Customer satisfaction

7. A customer satisfaction survey for the Committee has operated since November 2007, with comments being returned to the Chairman. Forms are sent out a few weeks after conclusion of work on each complaint, to people who wrote with complaints which were eventually upheld or dismissed, or where they made enquiries but the complaint had to be declined for consideration as out of jurisdiction. (They are not sent to people who only telephone or email: so the number of forms received from enquirers is small as most use telephone or email.) As last year, the response rate was quite high at about 70% for investigated cases, though rather lower for enquiries.

Enquirers' views

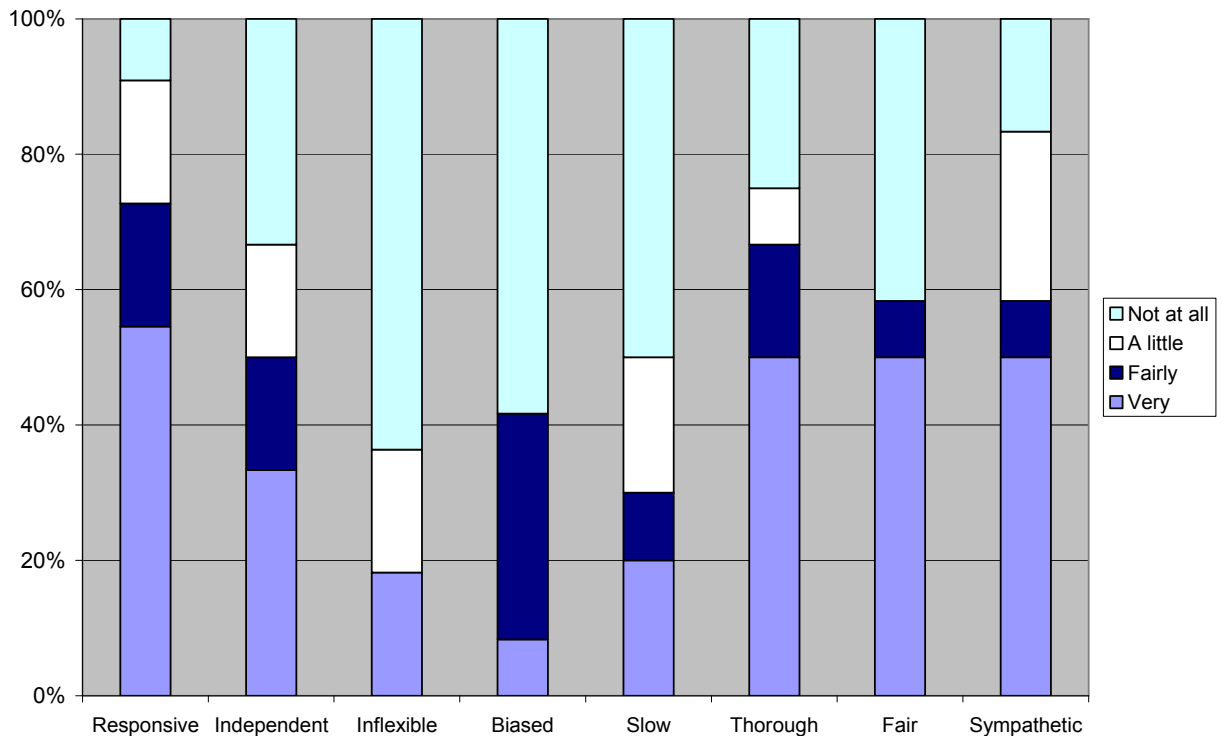
7. The five responses from enquirers showed that none had experienced any difficulty in finding out about the Ombudsman. Of those who responded to the particular questions all had found the response very prompt, helpful, thorough and sympathetic. The only negative comments were that two found the response either fairly or very inflexible: possibly because the Ombudsman had to refer them back to complete British Waterways' own complaints procedure.

Views of those whose complaints were investigated

8. A large majority of those surveyed felt that the Ombudsman had understood their complaints and they had been kept adequately informed about progress (75% said they felt the Ombudsman had understood matters

very or fairly well and 82% that she had kept them very or fairly well informed). The chart below shows the views given about some other aspects of the service as perceived by complainants.

Views of complainants 2009-10



9. Encouragingly fewer complainants this year felt the service was fairly or very slow, than last year when a number of complaints had suffered delays. As can be seen, the service scored best on responsiveness, sympathy, thoroughness and fairness. However sadly, despite all the evidence to the contrary, a number of complainants still have doubts about the independence of the scheme.

10. Four out of 12 respondents said that they were fairly or very dissatisfied with the way things were handled. However this may reflect the fact that six out of 12 did not agree with the decision at all. Although the question asked about views on the handling of the complaint, inevitably not all complaints will be upheld and it is known that views about Ombudsman schemes are often affected significantly by the eventual decision. Nevertheless seven out of twelve respondents said that they would recommend friends or family to contact the scheme about a complaint, and nine out of 12 said that the decision had been explained very or fairly well.

11. The Committee also considered the wide range of more general comments made by complainants but did not feel that the comments indicated any need for significant revision to the scheme.

12. Two complaints about the Ombudsman's actions were sent to the Chairman (and one of those was also sent to all other Committee members). The Committee decided there were no grounds to intervene, as there was no evidence of a failure by the Ombudsman to investigate the complaints thoroughly or to act in accordance with the Rules of the Scheme.

Funding of the Scheme

13. At their November meeting the Committee discussed the funding of the scheme by British Waterways and felt satisfied that that was sufficient for the scheme's efficient and effective operation.

Future plans

14. During 2010-11 the Committee will need to arrange the appointment of two new independent members and make plans for appointing a new Chairman and Ombudsman, as their terms expire during 2011-12.

Conclusion

15. This has been a quiet year for the Committee with no significant issues arising at the one meeting, but 2010-11 will be much busier.



Members of the Committee – during 2009-10

Chairman

Professor Jeffrey Jowell QC, Professor of Law, University College London; Practising barrister at Blackstone Chambers; a member of the Royal Commission on Environmental Pollution and UK Member of the Council of Europe's Commission for Democracy through Law ('The Venice Commission').

Other Independent Members

Michael Reddy, formerly Chief Executive of the Office of the Independent Adjudicator for Higher Education and Deputy Banking Ombudsman, Director of Syndicus.

Miles Smith, a solicitor, was, until 2005, Director of Corporate Services and statutory monitoring officer with the London Borough of Croydon. Subsequently he was an Associate Director with KPMG Advisory and then managed his own public sector consultancy company.

Members appointed by British Waterways Advisory Forum

Ann Davies, co-proprietor of Napton Narrow Boats, a hire boat and marina business located in central England and former chairman of the Association of Pleasure Craft Operators (APCO), Chairman of the British Hire Cruiser Federation.

Geoff Ashton, boater since 1980. Partner in small moorings and short break/day hire business. Various Deputy Chair of APCO, Chair of British Hire Cruiser Federation, member of Visit Britain Tourism Development Committee, Council Member BMF. Currently, and for last 10 years, National Treasurer of Association of Waterways Cruising Clubs.

Peter Lea, a Chartered Accountant, was vice-Chairman of the National Association of Boatowners for three years, and then its Chairman for a further three years. During this period he served on numerous committees on waterway matters.

Members appointed by British Waterways

John Bridgeman CBE TD, Vice Chairman of British Waterways, Chairman of Fair Trading Committee, Chairman of Wales Advisory Board, Pension Trustee and Member of the Audit Committee; Independent Appeals Commissioner for the Direct Marketing Authority and Independent Complaints Adjudicator to the Authority for Television on Demand; Independent Regulatory Director of the British Horseracing Authority; Chairman of the Audit and Standards Committees of Warwickshire County Council and Warwickshire Police Authority; Formerly Director General of the Office of Fair Trading and a Member of the Monopolies and Mergers Commission.

Nigel Johnson, Legal Director of British Waterways and formerly Chief Solicitor to Cheltenham & Gloucester plc.



ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN FOR 2009-10

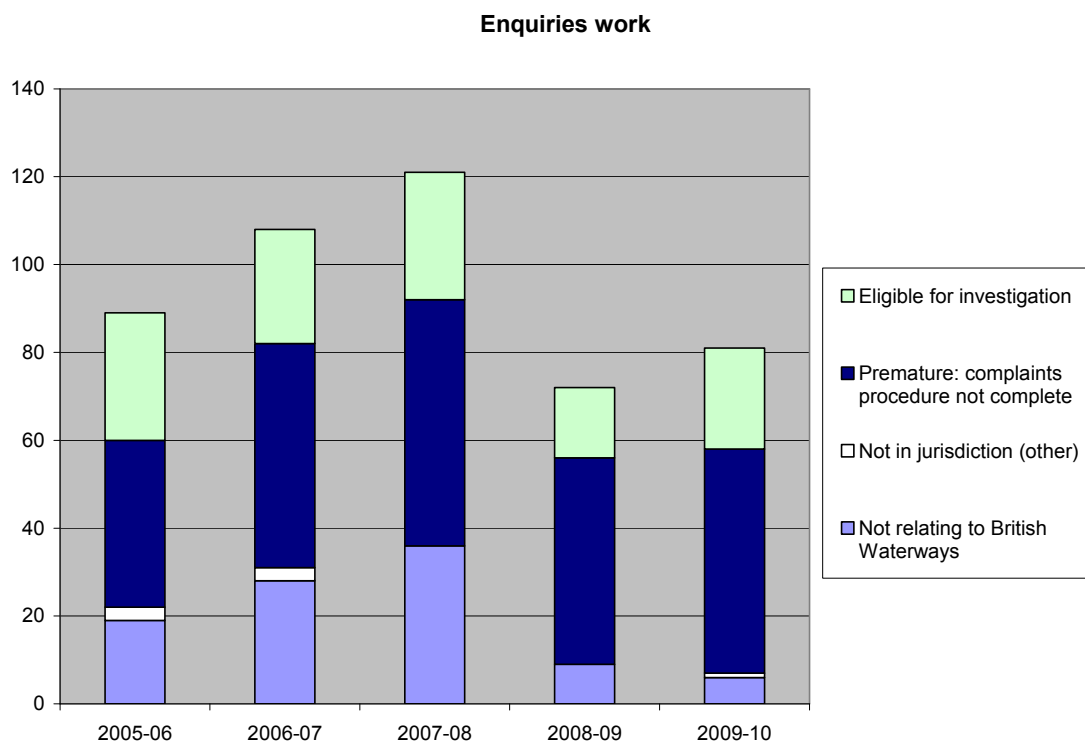
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Introduction

1. This is my fifth annual report as Waterways Ombudsmen. It covers the period from April 2009 to March 2010. After a fall in 2008-09 the number of complaints has risen again significantly, though not as far as the peak in 2007-08.

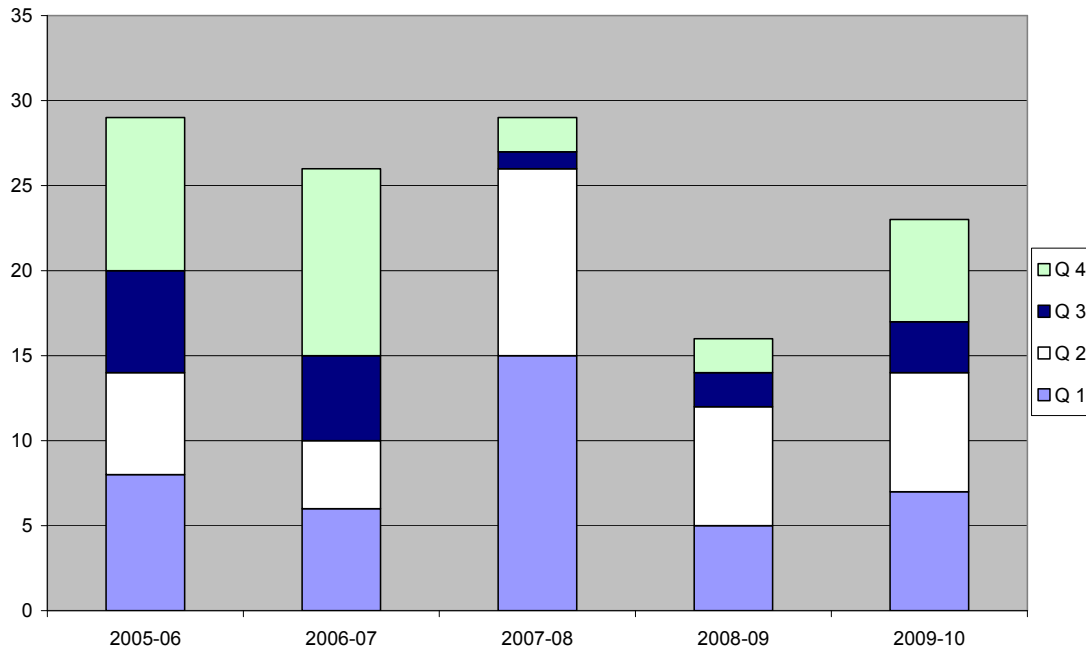
Casework - workload

2. I dealt with 81 enquiries (compared to 72 in 2008-09). The number of enquiries about matters unrelated to British Waterways has continued to fall, down to 6 (7%) compared to 36 (28%) in 2007-08 and 9 (12.5%) in 2008-09. So, as can be seen from the chart below, there was a significant rise (19%) in the number of enquiries relating to British Waterways when compared with last year.



3. I can only consider complaints put to me which have completed stage 2 of British Waterways' complaints procedure (or where the procedure has failed). 23 of the enquiries were complaints within my jurisdiction which I was able to accept for consideration. This number represents a significant increase again, after a dip in the numbers to only 16 last year.

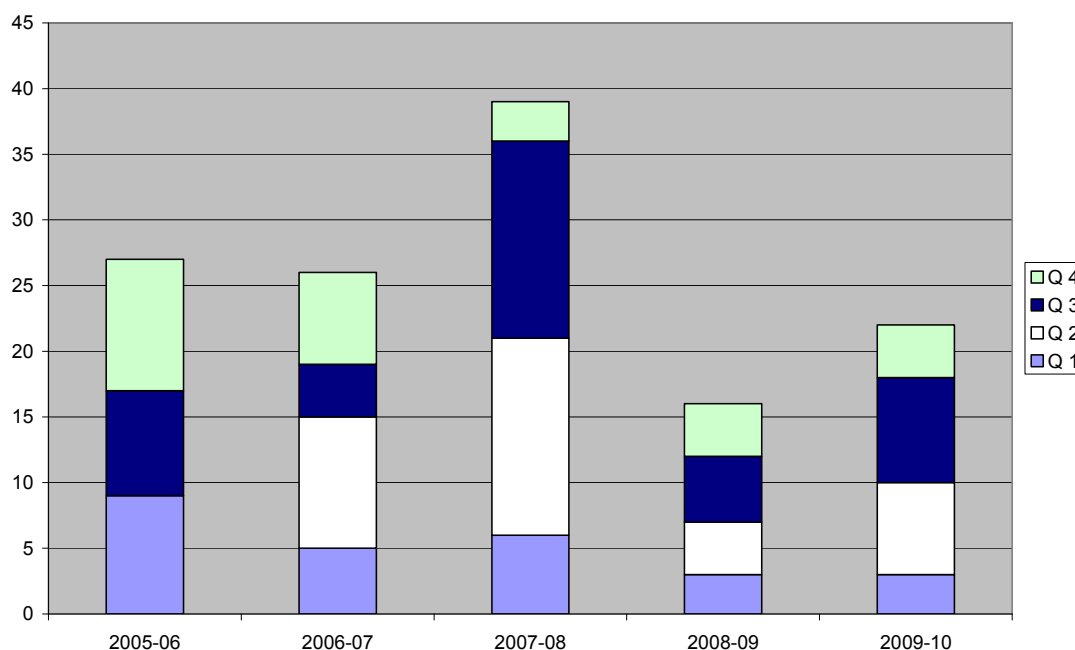
New cases 2009-10



4. I commented last year on the fact that the number of complaints entering the British Waterways' system at stage 1 had fallen dramatically, and that that could account entirely for the drop in my workload. This year, although the number of complaints entering the complaints procedure has continued to fall, the number reaching me has risen. Now over 34% of complaints which reach stage 2 come on for me to consider, and they account for over 6% of complaints at stage 1: both proportions have increased significantly from last year.

5. I completed 22 investigations this year compared to 16 last year and 39 the year before. Of those six were not upheld, two were discontinued, one was treated as withdrawn, five cases were resolved to my satisfaction after informal action by British Waterways following my intervention, and eight were upheld wholly or in part in formal reports. As in previous years, British Waterways have agreed to act upon all the recommendations I have made in my reports. They have apologised to complainants in respect of any critical findings and paid compensation or taken other remedial action as appropriate.

Investigations completed quarterly



6. At the beginning of the year I completed a pair of related, complex and very old complaints which had suffered from various delays (including some by me whilst I was very busy in 2008). The average time to complete the other 20 cases was 101 days (a further improvement on 110 days the previous year), but with quite a varied range.

<i>Time to completion</i>	<i>2006-07</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>
<3 months	6 (24%)	12 (31%)	10 (63%)	13 (59%)
3-6 months	11 (44%)	17 (44%)	4 (25%)	4 (18%)
6-9 months	2 (8%)	7 (18%)	1 (6%)	2 (9%)
9-12 months	3 (12%)	0	0	1 (5%)
>1yr	3 (12%)	3 (8%)	1 (6%)	2 (9%)

The case which took 9-12 months and one of the two taking 6-9 months were both suspended for a substantial part of that time with the agreement of the complainant, awaiting further action by other parties. I have not yet needed to call upon the contractors I appointed last year to assist with any peaks of work.

7. Fourteen of the twenty-two completed investigations related to complaints by leisure (six) or residential (eight) boaters, one was from a commercial boat operator, two related to arrangements for sale or tenancies of British Waterways' land or property and five were from people living adjacent to canals. Two of the boating complaints related to Section 8 removals of boats, and another seven related to moorings in some other way. Summaries of all completed investigations can be found in Annex B. One investigated complaint related to Scotland, one to Wales and the rest to England. One of

the complaints related to British Waterways Marinas Limited (BWML – a wholly owned subsidiary of British Waterways which operates marinas) and the rest to British Waterways directly.

Service standards

8. The service standards set by the Committee in March 2009 have all been exceeded:

- acknowledgement or response to initial letter, email or telephone call within a week of contact in **100%** of cases (target of 90%);
- decision on whether to investigate within 3 weeks of initial contact in **100%** of cases (target of 90%);
- **77%** of investigations complete within 6 months of acceptance (target of 65%).

Issues arising from complaints

Complaints handling

9. Last year I commented on a number of cases where letters of complaint seemed to have been lost, ignored or handled fully or partly outside the system. I have seen some similar issues this year though not as many. In one case a man had emailed British Waterways with a complaint on three occasions but received no reply. I arranged for him to obtain one. In another case several people had raised concerns about the same issue over a period of two years. Some people had been told about the complaints procedure, some apparently not and none had progressed to the second stage. The issue was eventually resolved when British Waterways arranged a meeting with interested parties. In a third case I accepted a complaint on the basis that the procedure had failed. BWML failed to treat correspondence as a complaint when it should have been clear that it was, in a third round of correspondence the complainant was wrongly told that BWML could not do any more because he was no longer a customer and when the complainant tried to move to the second stage of the procedure, he was sent back to BWML for a fourth response.

10. I have raised my concerns with British Waterways in each of the individual cases involved. More generally I am concerned that the fall in the number of recorded complaints to British Waterways may in part be due to some complaints not being recorded as such. Whilst it is generally entirely right for problems to be resolved quickly and informally, care is needed to ensure that customers are not prevented from accessing the complaints procedure when that is what they want.

11. Whilst many responses to my enquiries or recommendations to British Waterways have been prompt, there have been too many occasions when I have needed to chase a second time for responses and a few quite significant delays. I appreciate that the Directors, with whom I mainly correspond, are very busy but timely responses are very important if the Ombudsman scheme

is fully to achieve its purpose. I look to British Waterways to ensure that responses are more consistently timely in the year ahead.

12. As in previous years, British Waterways have accepted all the recommendations for remedial action made in my decisions, and I have maintained my involvement until necessary actions have been taken.

13. I was grateful for the chance, given to me by British Waterways, to comment on changes to their internal complaints process following the restructuring in 2009. I did have some concerns that the new allocation of responsibilities for stage 1 responses might cause some difficulties: both in confusion for customers about which manager to contact and possibly the Head of Boating Business being inundated with complaints. However I am pleased to say that as yet I have not seen any evidence of problems for complainants as a result of the changes.

14. I am pleased that British Waterways took up an offer I made some time ago, for me to make a presentation to key staff in a workshop on complaints handling. One took place in May 2010, with a further session for more senior staff then being arranged for July 2010.

Residential boating

15. This year, I think for the first time, the majority of the boating complaints were from residential boaters. There were two related issues which arose more than once: continuous cruising and the demarcation between leisure and residential moorings.

16. Two people made complaints which essentially sought to question the legality of British Waterways' approach to boats without a home mooring: often known as 'continuous cruisers'. I recognise that there are a range of views on the subject: often strongly held. If it was entirely clear to me that British Waterways were acting outside the law, then of course I would regard that as maladministration and unfairness and expect them to comply. However these cases largely hinged on disputed points of law: I am not in a position to provide a definitive interpretation of the law in such cases. Only the Courts can do that.

17. In three other cases the residential boaters did want a home mooring (and at least one felt very strongly that she did not want to be a continuous cruiser). However issues had arisen in two cases when (although the complainant said that they had always been open with British Waterways about their intention to live on their boat) they had been offered and accepted moorings which did not have planning permission for residential use. Some time later, when other issues arose, they had been told that they should not have been living on their boat and felt that they had been misinformed previously. I can see that in many ways a more rigid demarcation and active enforcement of the difference between official residential and non-residential moorings would be better: but I am conscious

that it would act against the interests of a considerable number of people, as in practice there would be far fewer moorings where people were able to live on their boats. However it is important that moorers are informed, before taking a new mooring, of the status regarding residential use and the possible implications if they choose to live at a site which does not have planning consent for residential use. I was pleased to see that this issue was covered in British Waterways' consultation in November 2009 on its Mooring Policy, and I look forward to seeing the outcome of that

Withdrawal/settlement of complaints

18. One complainant this year decided that he did not wish me to proceed to a final decision – having seen from a draft report that I was not intending to uphold his complaint. This was not the first time something similar had happened. I decided that I should go along with that on this particular occasion, and that I would have to treat the complaint as having been withdrawn. However, particularly in other cases where I may already have conducted very detailed investigations (which may be stressful for British Waterways' staff involved), I cannot see that it would generally be right for me not to proceed to a formal decision, once a complaint has reached draft decision stage. Similarly if British Waterways seek to settle a complaint informally only once a draft report has been issued, I cannot see that it would generally be fair to the complainant not to proceed to a formal decision. Having consulted with the Committee, I have now added into the information sheet I send to complainants (when I accept the complaint) a note to say that once I have issued a draft decision, I will generally proceed to a formal final decision even if they then ask to withdraw the complaint or British Waterways then ask to settle it informally.

Contacts with stakeholders

19. During the year I have attended:

- the National Boat Festival at Redhill on Soar at the invitation of the Inland Waterways Association;
- British Waterways' Annual General Meeting in Birmingham;
- an IWAC meeting where British Waterways' proposals for joining the third sector were discussed.

As always, on each occasion I have tried to make the most of the opportunity to meet as wide a range of those attending as possible.

20. In November 2009 I was invited to speak to the Fair Trading Committee of British Waterways' Board. I gave an overview of my 2008-09 annual report, an update on issues arising since and spoke about the future of the scheme.

21. During the year I twice had contact with BWML about the content of their website, having noticed issues when consulting the site whilst dealing with enquiries. On the first occasion I discovered that the website did not contain any details of their complaints procedure, or how to approach me: but instead

referred simply to their having a procedure which was 'independently assessed and audited' by the Ombudsman. They responded very promptly to the concerns I expressed about that rather misleading description of my role and instead of that added full details of the complaints procedure. On the second occasion, I discovered that a section of the website on their pricing policy stated inaccurately that the policy had been tested and approved by the Waterways Ombudsman. Such actions are not part of my role, and I was not sure I had even seen the current policy. Again they amended the site at my request.

Implementation of previous plans

22. In the 2008-09 Annual Report I indicated that my plans for 2009-010 included:

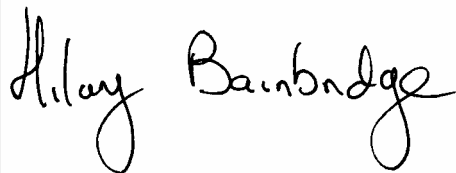
- reviewing the scheme's website, two years after it was first set up;
- developing a plan for dealing with complaints in other languages.

23. Work on both of these has begun. The website seems generally to serve its purpose well, and no major changes are planned: however a page in Welsh will be added.

Plans for 2010-11

24. This will be my last full year as Waterways Ombudsman as I will complete my second and final term of office at the end of June 2011. My focus will therefore be on consolidating the scheme's achievements and ensuring it is generally in a good state for handover to my successor, rather than on carrying out any major reviews or changes.

25. Looking further ahead, I note the proposals made by British Waterways about moving the waterways into a charitable trust, and that that possibility is to be considered by the government. Whatever the future status of the organisation in future, I see no less need for an independent arbitrator to be available to deal with complaints which have not been resolved internally.



Hilary Bainbridge
[Waterways Ombudsman](#)

Detailed data on enquiries – 2009-10

Group		
A	Not relating to British Waterways	6
B	Premature: internal complaints procedure not complete	51
C	Not in jurisdiction (other)	1
D	Eligible for investigation	23
	Total	81

Group A

Three were complaints about private marinas or hire companies: the first time such complaints have come to me. Two were complaints about a water utility company and one was a Freedom of Information request relating to a waterway not managed by British Waterways.

Group B

This group includes all enquiries made relating to British Waterways, which might be in my jurisdiction, but which had not yet completed the complaints procedure. A few of these were more requests for information than complaints. However most of these enquiries were from people with a grievance about the actions of British Waterways, but who approached me prematurely (ie before completing British Waterways’ complaints procedure). I encouraged them to use and complete the internal complaints procedure, and to come back to me if they remained dissatisfied when they had done that. I rarely know the outcome, unless I later receive an eligible complaint, after the internal complaints procedure has been completed. The majority of these enquiries relate to boating issues, though a range of other matters, especially relating to property also arose.

Case examples

1. Someone who regularly walked along the towpath of their local canal in London, emailed to complain about the amount of rubbish in the water. I explained how to contact British Waterways in London, and how to use the complaints procedure if dissatisfied with their response. I heard no more on this matter.

2. I was telephoned by a boat owner who wished to complain that commitments given about security services at his mooring had not been fulfilled by British Waterways. I gave him advice about how to make a formal complaint. Three weeks later he emailed to let me know that, following his complaint, relevant security provision was now being made.

3. Someone wrote to complain about delay in receiving a licence for their boat. They said they had applied for a six month licence (to begin on 1 April) in March, but that, despite a number of enquiries by the complainant, by the beginning of June the licence had still not arrived. I sent the complainant one of British Waterways' leaflets about the complaints procedure, and encouraged them to contact me again if matters were not resolved.

Group C

This was a complaint which had been through the complaints procedure, but considerably more than six months previously. It was therefore outside my jurisdiction.



Summaries of decisions on all eligible cases

Index of investigated cases

Cases No 102 and 212 – management of mooring account, removal of boat following Section 8 notice and related events

Case No 372 – enforcement action and continuous cruising

Case No 398 – vegetation overhanging canal

Case No 404 - enforcement action and continuous cruising

Case No 407 – action taken on complaints of pollution from woodsmoke from boats

Case No 410 – request for permission to establish mooring and information given about mooring arrangements

Case No 412 – arrangements for rent/sale of land

Case No 417 – use of unreasonably persistent complainants policy

Case No 418 – negotiations on house purchase, notice to quit and handling of complaint

Case No 424 – being sold a leisure mooring as a residential one

Case No 427 – maintenance of a hedge

Case No 429 – removal of hedge

Case No 435 – Section 8 notice

Case No 442 – failure to maintain winding holes or refund part of licence fee

Case No 444 – refusal to allow unpowered boat through a lock

Case No 447 – damage to window of boat and handling of complaint

Case No 448 – moorings outside home and cycling on towpath

Case No 452 – moorings for residential boater

Case No 467 – procedures for setting 2009-10 mooring fee

Case No 468 – power to charge for moorings and obligations regarding residential boaters

Case No 475 – sale of diesel by BWML



Cases No 102 and 212 – management of mooring account, removal of boat following Section 8 notice and related events

I did not uphold a complaint from Mr A relating to transferability of a mooring licence agreement with another body when his mooring site was taken over by British Waterways. However I did find that the handling of Mr A's mooring account by British Waterways over a period of years was extremely strange and highly maladministrative. Although British Waterways produced a copy letter notifying Mr A of a significant price increase, for years thereafter they continued to invoice him for the original amount, and at one point wrote to say he was overpaying. Later, without any explanation, they began invoicing him for the increase they said they had told him about previously: though by this point that was below the published rates. An explanation should have been given then and efforts made to sort things out: but neither party showed any great resolve to do so. Only several months later was Mr A told of plans to bring his charges up to the, much higher, published tariff. When British Waterways apologised for the previous mistakes, they said they were still legally entitled to recover the amount owing and that they had asked a staff member to look into the matter.

I said that whether or not British Waterways were legally entitled to recover underpayments made because of their own mistakes, I would not consider it proper administrative practice to do so in these circumstances. I was pleased that British Waterways later indicated that they did not intend to take such action. I upheld the complaint in that the account had been extremely poorly managed, beyond the extent already accepted by British Waterways, and that it had been wrong to appear to threaten recovery. However, other than the unnecessary worry caused by the threat, I could not see any injustice to Mr A from this. He had had a significant financial benefit from paying less than the usual rate for a long period of time. I expressed my hope that British Waterways had now ensured that no other accounts relating to these moorings had been left in the same disarray as Mr A's was.

Having taken legal advice, I could not see that in principle British Waterways were not entitled to rely on a notice they had issued 11 months previously when they removed Mr A's boat using powers given in Section 8 of the British Waterways Act 1983. Whilst I could see that Mr A found British Waterways' requirements (before issuing a new licence) onerous, as they were a significant change from the situation previously, they generally simply reflected normal procedures and were not unreasonable. Mr A felt British Waterways should have delayed matters further to seek an agreement with him, but I could understand why they might be less sympathetic than usual to such a request as there had been related difficulties for several years. Mr A's responses to correspondence following the Section 8 notice were made only at the brink of any deadlines given, and did not cover all the necessary points. In my view he was given adequate notice of what was required, but did not comply fully. I did not see that I had grounds to uphold his complaint

about the boat's removal, nor a complaint that he had been wrongly deprived of his mooring.

I did not uphold complaints that British Waterways did not tell Mr A exactly when they would remove the boat or where it was held, nor a complaint about the inspection of the boat when it was removed. I made no finding in respect of a complaint about providing the press with inaccurate information, as I could not see a way to make a finding fair to both parties.

However I upheld a complaint that Mr A had been charged an unreasonable amount for the removal of the boat. In my view it would have been much better if British Waterways had issued a fresh Section 8 notice before removing the boat, rather than relying on one 11 months old: but they did not. After the boat was removed, Mr A was charged significantly more than a 'maximum total charge' quoted previously when the Section 8 notice was originally served. I felt that Mr A should not have been charged any more than the 'maximum total amount' originally quoted to him. I recommended that British Waterways should refund the difference.

Case No 372 – enforcement action and continuous cruising

Mr B complained to me about a number of related matters involving continuous cruising and enforcement action. Although some matters were in my jurisdiction, one was outside the time limit and most had not yet been considered under British Waterways' complaints procedure and were therefore out of my jurisdiction. Mr B accepted my suggestion that it would be better for all aspects to be considered together and I therefore suspended action on the matters in jurisdiction, pending completion of the complaints procedure in respect of the other aspects. However when, several months later, I prompted Mr B for an update I received no response within the time limit I gave and I ended my involvement.

Case No 398 – vegetation overhanging canal

I discontinued enquiries into a complaint about vegetation overhanging a canal when the complainants failed either to provide photographic evidence of the problem or to respond to requests for details of where on the canal the problems were (so I could inspect the site myself).

Case No 404 - enforcement action and continuous cruising

Mr C made a complaint about the concept and rules of continuous cruising and the enforcement of those rules, and about alleged discrimination against continuous cruisers which he said constituted abuse. He neither wished to have a home mooring nor to comply with Section 17(3)(c) (ii) of the British Waterways Act 1995 regarding boats being used 'bona fide for navigation' throughout the period of the licence. His interpretation of that Section differed from British Waterways'. After I issued a draft decision on the complaint, Mr C decided that he did not wish to proceed with the complaints procedure and did not require a final decision. I told him that I would therefore have to regard his complaint as being withdrawn.

Case No 407 – action taken on complaints of pollution from woodsmoke from boats

The resident of a house in Scotland complained to British Waterways about pollution from woodsmoke being emitted by boats at an adjacent mooring, but was dissatisfied with their response. However shortly after I became involved British Waterways said they would take further action. With the complainant's agreement I suspended action on the complaint pending the outcome of that. I left it up to the complainant to come back to me if matters were still not resolved. I told him that if I did not hear from him within six months I would assume that matters were progressing satisfactorily and that his complaint had been resolved. I did not hear from him within that period, and therefore closed the case at that point.

Case No 410 – request for permission to establish mooring and information given about mooring arrangements

Ms D has lived on her boat for many years, but left her long term mooring because of a noise problem. Having failed to find another suitable mooring in the area where she worked, she obtained (and paid for) a second mooring some distance away, so that she could obtain a licence on the basis of a home mooring rather than being a continuous cruiser (which she did not wish to be). Despite Ms D telling British Waterways about the second mooring, they recorded her as being a continuous cruiser, but did not tell her they had done that. Eventually she and the owner of some land adjacent to the canal (where another boat was already moored) approached British Waterways for permission for her to set up a home mooring there (the third mooring). Although the moorings officer clearly would have been willing to give a permit, a more senior member of staff decided permission should be refused.

I decided that there had been maladministration by British Waterways when they failed to deal properly with Ms D's attempt to establish the second site as her home mooring. She had returned a form declaring it as a home mooring: but, rather than either accepting it as such (or if they felt that there was inadequate evidence that this was a proper home mooring, letting her know their reasons for that), they simply started treating her as a continuous cruiser. I could not see that she would have paid any further mooring fee for 2008-09 at the second mooring if she had been told in 2007 (when she first listed that site as her home mooring) that she was still to be treated as a continuous cruiser. Ms D was thus deprived of adequate information about her mooring and licensing situation, which I regarded as an injustice to her. I upheld that aspect of her complaint and recommended that British Waterways should clarify the position about the second mooring, and say whether or not they would accept it as a home mooring. If not, they needed to explain why. In that situation they should refund any mooring fees Ms D paid for 2008-09. I also recommended that they should offer to discuss these issues at a meeting and give their views in writing.

British Waterways needed to take their online moorings policy into account when considering the request to moor at the third site. That did not necessarily mean that a mooring permit should be refused: nor however did it mean that one should necessarily be granted. The decision was finely balanced in this case. Whilst I had considerable sympathy for Ms D, who seemed generally to have tried to do the right thing, I could not see that I could properly conclude that the refusal of permission to moor resulted from maladministration by British Waterways: but from a judgement which they were entitled to make. I could not therefore uphold this aspect of the complaint.

Case No 412 – arrangements for rent/sale of land

British Waterways owned land between the end of the gardens of a group of houses and a canal. Some pieces of the land were sold to the house owners, some were rented out (at various levels of rent) and some were thought to be in use by home owners without paying rent. British Waterways decided to sort out arrangements for the land and wrote to residents about it. One resident complained to me that the approach taken by British Waterways had amounted to bullying or harassment. He had particular concerns about the initial setting of prices and a timetable laid down.

By that point, British Waterways had accepted that communication on the matter could have been better and apologised for the distress and upset caused: but did not accept that their actions amounted to bullying or harassment. In principle I could see nothing wrong with British Waterways stating the price they would expect to receive, though I would expect any such body to set a fair initial price and to reconsider in the light of any representations made. But I could appreciate why, given the many small plots concerned, British Waterways were reluctant to engage in separate detailed negotiations with individual residents (indeed such negotiations might run the risk of generating complaints about inconsistencies in pricing). They did seem to have adjusted the rental prices from those first given and had offered to meet with a group representing residents. Nor, in principle, did I think that trying to set a timetable for action was evidence of harassment or bullying. Although some of the times initially given were rather short, more time was then allowed. I decided that there were no grounds for me to take matters further or to uphold the complaint.

Case No 417 – use of unreasonably persistent complainants policy

Mr E made various enquiries with British Waterways relating to their activities and responsibilities in the area where he lives. He complained to the Information Commissioner about their response to some of those enquiries. British Waterways applied their 'Unreasonably Persistent Complainants Policy' to him and indicated that they would not enter into any further communications with him, either for six months or until the Commissioner had given a decision. Mr E complained to me about the way British Waterways had applied the policy to him and that they declined to review matters even when the Commissioner had reached his decision.

I generally leave issues relating to Freedom of Information (FOI) or the Environmental Information Regulations (EIR) to the Information Commissioner. However in this case the potential interaction of technical issues about legal rights to information and general complaints processes seemed to be at the root of some of the problems. The 'Unreasonably Persistent Complainants Policy' was designed to be used in respect of general complaints, not in situations where legal rights to information are involved. I could not see that its use could properly be extended in the way British Waterways tried to do here. An internal policy regarding general complaints cannot be used to justify flouting the law. It was entirely inappropriate for British Waterways to say that they would not respond to *any* enquiries from Mr E even if requests were made under FOIA or EIR. They were only entitled to refuse to supply the information if a legally valid exception applied. In my view it was therefore maladministration for British Waterways to attempt to apply their policy in the way they did.

When Mr E sought a review of the application of the policy, following the Information Commissioner's decision, British Waterways still declined to review matters apparently because (they said) the Commissioner had brought matters to an end without a formal conclusion. I felt that that was an unreasonable, somewhat pettifogging, approach to take. Whether the decision was a 'formal conclusion' or not, it was a decision. Furthermore it contained significant criticism of British Waterways' handling of Mr E's requests. Eventually, after I had issued a draft of my report, British Waterways reviewed matters and ceased applying the policy to Mr E. I regarded it as further maladministration that the application of the policy was not reviewed thoroughly several months earlier.

There was a clear injustice to Mr E in that he was denied the right to request information to which he might have been entitled for most of a six month period. He was also very concerned that application of the policy had besmirched his name with others involved who were made aware of the situation by British Waterways. I recommended that British Waterways reviewed their arrangements, any guidance for staff on and relevant staff's understanding of a) the distinction between FOIA/EIR and more general complaints and how they should be handled, and b) the application of the policy. I also recommended that they inform any of their staff and any external bodies, who had been informed of the application of the policy to Mr E, of my decision and that they provided me and him with a copy of the documents conveying that information.

Case No 418 – negotiations on house purchase, notice to quit and handling of complaint

Mr and Mrs F had a shorthold tenancy of a house owned by British Waterways, who wished to sell the house on a long term lease. Following British Waterways saying that they intended to seek vacant possession before a sale, Mr and Mrs F made an offer to buy the house. British Waterways had

the house valued and sought a significantly higher price. Negotiations took place on various issues including the terms of any lease and the state of repair of the house. Over a year after the original offer no agreement had been reached. British Waterways had reduced their price but it was still significantly more than Mr and Mrs F's offer, which had not changed. British Waterways decided that it was not going to be possible to reach an agreement and said that they would begin proceedings to regain possession of the house, in advance of a sale on the open market. Mr and Mrs F still wished to purchase but asked if any possession proceedings could be delayed so they could move during the school summer holidays. British Waterways declined further negotiation or a delay.

I did not uphold complaints about maladministration and unfairness in British Waterways' approach to selling the property and the conduct of the negotiations. British Waterways were under no obligation to sell the house to Mr and Mrs F, or even to continue negotiations when they were clearly so far apart in the initial stages. In fact they did engage, albeit sometimes fairly slowly, in negotiations for quite a long time, and did reconsider and adjust their price, whereas Mr and Mrs F did not seem to shift their offer at all.

Nor did I uphold a complaint about failure to give reasonable consideration to Mr and Mrs F's requests for an extension of their tenancy. British Waterways had no legal obligation to give Mr and Mrs F more than two months' notice, expiring at the end of a rent period. To allow them to move in the school holidays would probably only have meant allowing three rather than two months' notice, and it was not clear to me that it would have caused a significant difficulty to British Waterways to have allowed that. However, whilst the approach was not particularly sympathetic, I could not see that it was maladministrative or unfair.

I did uphold one small aspect of the complaint, about the way the complaint to British Waterways was handled. That related to an inaccuracy in a response.

Case No 424 – being sold a leisure mooring as a residential one

Mr G began occupying a British Waterways mooring in 2006. In 2007 he got behind with mooring fees. In the course of contacts about that he was told that he should not be living on his boat as the mooring was only a leisure mooring. He removed his boat from the mooring during 2007. Eventually Court action was initiated regarding the money he owed (his concerns relating to that were therefore outside my jurisdiction). I considered his complaint that the mooring had been 'mis-sold' to him as a residential mooring.

Mr G said he had always made it clear that he wanted a residential mooring. I looked for documentary evidence. The mooring application form signed by Mr G contained no reference to whether the mooring was for residential or leisure use, and I could not identify any other significant relevant

documentary evidence on the issue. I could not see that I would be able to resolve a conflict of evidence about exactly what was said in conversations.

British Waterways confirmed to me that their practice had been that they did not generally intervene if people lived on their boats in online leisure moorings so long as any site rules were obeyed and there were no complaints about residential use. I could see that, in the light of that, staff might have offered Mr G a leisure mooring in an effort to be helpful even though they knew he planned to live on his boat. If so, it would have been best if they had also explained that the mooring was not officially designated as residential. He said they did not do that.

However, from Mr G's own account, when British Waterways later threatened to take action against him, that was because he owed money: not because of the status of the mooring. He had been able to use the mooring as a residential one but he would probably have been paying less than for an official residential site. Whatever the designation of the mooring, the service he received was a site where he could moor his boat and live on it (ie use as a residential mooring). When I could not see that there was any significant injustice to him from the alleged maladministration by British Waterways there were no grounds for me to uphold the complaint.

Case No 427 – maintenance of a hedge

British Waterways own a three hundred yard stretch of hedge along the boundary of Mr H's garden. Mr H is elderly. He complained that British Waterways were refusing to cut back a seventy yard stretch of the hedge which was very overgrown and overhanging his property and was in part preventing proper access to some of his buildings. I made enquiries to British Waterways about the possibility that in law the overgrown hedge might constitute a nuisance. They then offered to cut back the stretch nearest to the buildings (though they still argued that generally Mr H had a remedy for any nuisance by cutting back his side of the hedge himself). Taking into account an element of legal uncertainty about the matter, I felt that that offer was as much as I could reasonably expect British Waterways to do. I therefore regarded the complaint as resolved.

Case No 429 – removal of hedge

A local resident complained about a decision made by British Waterways to allow a stretch of hedging to be removed along a towpath. British Waterways had agreed that the owner of an adjacent house could rent the strip of land on which the hedge was sited and replace it with a fence, because of concerns about security at their home. The complainant was concerned about the environmental impact of the loss of the hedge and questioned whether it complied with British Waterways' Environmental Code of Practice (ECP). Following enquiries I made, British Waterways accepted that they had wrongly failed to complete an ECP appraisal, but initially said they were not planning any immediate further action on the matter. I indicated that I proposed asking them formally to reconsider whether or not

agreeing to the hedge was appropriate, bearing in mind the ECP, the views of the resident, those of the house owner and any other relevant factors. British Waterways then said that on reflection they believed that it had not been. They would therefore begin the process of terminating the agreement regarding the land, remove the fence and replace the hedge.

I upheld the complaint and recommended that British Waterways should proceed expeditiously to implement their reconsidered decision about the hedge taking all relevant factors into account, and that they should consider what action could be taken to reduce the risk of a similar failure to conduct ECP appraisals in future.

Case No 435 – Section 8 notice

Mr J moored his boat near to a property he owned, but it was removed by British Waterways following issue of a Section 8 notice. He complained:

- about the way the notice was served;
- that service of the notice should not have gone ahead when enquiries were still underway regarding issues he had raised about the site;
- that the reason given for impounding his boat was wrongly given as licence evasion.

A dispute with British Waterways about the site had been ongoing since at least 2007 and Mr J had left his boat there despite a number of warnings about the likely consequences. He argued that various relevant investigations were still underway, and that it was therefore wrong for a notice to be served. However, even if he was correct about ongoing investigations (and I did not think he was), that would not have meant that he was entitled to moor without consent or that British Waterways could not serve a Section 8 notice. British Waterways were entitled to do so, when Mr J had chosen to keep his boat moored at the site knowing that they had refused him permission and there was no evidence that he had any right to moor there without their consent.

Mr J was willing to pay for a licence, so licence evasion may not have been the best description of the situation: but British Waterways were entitled to refuse him a licence when he neither had a lawful mooring nor cruised continuously. However I could see no particular injustice arising simply from the reference to licence evasion.

By law the Section 8 notice should have been sent to Mr J's 'last known' address. In fact it was sent to his property near the boat, even though British Waterways knew that Mr J did not live there, and enforcement staff had been corresponding with him at his home. They seem to have believed that they had to send the notice to his last 'registered' address which they saw as the canalside property. Even when Mr J said that he would not have received any notice sent to the property, a second copy was sent there. One might have expected Mr J to have made arrangements to receive post sent to the

canalside property, but the failure to send the notice to his last known home address was maladministration.

However I could not see, in this case, that it would have made much difference at all if the notice had been sent to the correct address. Mr J had been sent a full copy of Section 8 itself to his home back in October 2008 and there was evidence he had received that. Emails showed that Mr J knew in January 2009 that a Section 8 notice had been sent to him and that it indicated that if he did not move his boat by mid February it could be removed by British Waterways. The boat was not removed until mid-March.

Furthermore, from what he told me, Mr J still did not move his boat, not because of the problem over the address, but because he was hoping to have his 'day in Court'. Based on a press release on British Waterways' website, he had a mistaken belief that British Waterways would need to take him to Court before removing the boat. In fact the press release made it clear both that many boats had been removed without Court involvement and that Court action was taken when dealing with boats on which people were living. One might have expected that to alert Mr J to the fact that Court action would not necessarily be taken in his case, and press releases are not designed to give advice in legal disputes. I could not see that it was it was British Waterways' fault if Mr J chose rely on the press release and misinterpret it as he did.

Clearly it was an injustice that the formal Section 8 notice was not sent to the correct address and apparently Mr J did not receive it. To that extent I upheld the complaint. However I could not see that any remedial action was required other than an apology. Mr J was as well informed of the situation as he would have been if the formal notice had gone to his home address: even then he would not have moved his boat before British Waterways did, because of his false expectation that a Court hearing was needed. British Waterways told me that they had reaffirmed to their enforcement officers that they should use the last known address rather than simply the address 'registered' in their records, so the risk of a repeat of the problem had been addressed.

Case No 442 – failure to maintain winding holes or refund part of licence fee

The operator of a trip boat complained that British Waterways had wrongly neither maintained winding holes (turning areas) he need to use, nor agreed to refund any of his licence fee. In the 2009 season the operator had been unable to use a popular route because of the problem, and his operation had been restricted to a much less popular alternative. He felt he should have half his licence fee refunded. British Waterways had suggested he could have a sum equivalent to half his licence fee refunded if he surrendered his licence entirely. In June they said they would try to complete works in the worst affected areas by the end of August, but in October they told me work was only then being done on the winding hole most important to the operator.

I could see how difficult the situation must be for a small business, when they are so dependent on the actions of British Waterways. However British Waterways too are dependent on others and, like any organisation, may not have adequate funds to do all they would like. In their last annual report they had said that 'the waterways are not sufficiently funded to allow maintenance of the network at a stable and acceptable quality level'. I could not simply make my own decisions about the relative priority British Waterways should give to funding various aspects of their work.

From what British Waterways told me, the fact that the holes had not been kept to a suitable standard was not because of an administrative mistake: but because of the resources available and priority given to the work. Nor could I see that the general law about maintenance of canals had been breached. So I did not think the failure to maintain the holes to the level the operator required resulted from maladministration or unfairness.

However, customers should be given accurate information about what standards they can expect. British Waterways publish Customer Service Standards partly for that purpose. Although, when he bought his licence in early 2009, the operator knew that the holes were not at the standard he needed, he had a reasonable expectation that that would soon be remedied: the published Standards said that the target was for 100% of holes to be adequate for boats to pivot by April 2009. However British Waterways told me that the management in that area had recognised that 25% of their winding holes fell short of the Standard, and in May 2009 they had been given a dispensation by a Director to remedy matters during 2009-10. That was not apparent from the published Standards. I would not necessarily conclude that every failure to meet Standards was maladministration: from time to time there may be reason why meeting Standards is not uniformly possible. However I did think that it was maladministration, when British Waterways knew in advance that they would fail to meet this Standard to a significant degree, that they failed either to amend it or to inform customers. Following my enquiries they recognised that there had been a failure in communication.

I decided that the operator was entitled to a refund of part of his licence fee in recognition of the failure in communication about the service he could expect to receive for that fee. He had previously said he felt that £900, ie about half the fee, would be appropriate. Since it would have been wise for him to make earlier specific enquiries when the holes were so crucial, when he was still able to work on the other route, and when it seemed that at least one hole would be usable for part of the year (albeit the winter) I recommended that British Waterways should refund to the operator one quarter of the fee for 2009-10. I also recommended that they should review arrangements for publicising their Customer Service Standards to ensure that customers are aware of any foreseen significant deviations from them.

Case No 444 – refusal to allow unpowered boat through a lock

Mr K and his wife planned a trip on the Weaver Navigation in their rowing skiff but, on safety grounds, were refused passage at the first lock they encountered. Mr K said they had used the boat extensively though the country and been through many locks, both small and large, without difficulty and he felt the ban was unjustifiable. He pointed out that the terms of their short term licence said that there was no general restriction on the use of locks by portable and unpowered boats. British Waterways said that nevertheless specific local restrictions might apply but accepted that such a restriction should have been published. They had offered to refund the licence fee and said they would be reviewing the position on the use of locks by unpowered craft there, and would then publish any local restrictions which remained. When he approached me Mr K remained dissatisfied that the local restriction remained in force, and doubted the review would change matters.

I explained to Mr K that I could not simply impose my own views about whether or not unpowered boats should be able to use the locks. However I did think that, as part of the remedy for Mr K's complaint, British Waterways should give a commitment to inform him when they had completed the review and explain their ultimate decision to him. They agreed to do that, and also offered to make arrangements for Mr K to contribute to the review. On that basis I decided I could regard his complaint as resolved.

Case No 447 – damage to window of boat and handling of complaint

Mr L complained that a window on his boat had been broken by contractors working for British Waterways who were strimming vegetation alongside the canal. The contractors had denied responsibility for breaking the window. British Waterways offered £30 of vouchers as a goodwill gesture but said they felt that Mr L's complaint had been fairly investigated. I found that the contractors' view appeared to have been influenced by a comment from one of their staff, that the state of tape securing the cracked glass suggested that it had been damaged for some time before the incident reported by Mr L. However Mr L had never been told about this so had had no chance to refute it, which I felt was unfair to him. I expressed concern about this to British Waterways. Since the complaint did not reach me until nearly a year after the incident it was too late for any inspection to resolve matters. I felt I must ignore any evidence about the tape and that in the very particular circumstances here British Waterways should have funded the cost of a repair. They agreed to my informal suggestion that that would be appropriate, and to inform the contractors of my concern about how matters were handled. I regarded that as sufficient to resolve the complaint.

Case No 448 – moorings outside home and cycling on towpath

Mr M complained about problems from formal visitor moorings established on a towpath close to his home in Wales: he wished to have them removed and boaters diverted elsewhere. He also complained about the way the towpath was being used by cyclists. British Waterways were unwilling to remove the moorings and explained why that site had been chosen, but said they would

put up a sign reminding customers to be considerate. They said that in any event they were reviewing their cycling policy in that area, and Mr M's views would be taken into account in that. I explained that visitor moorings were a normal use of a canal and I could not see any basis for me to criticise British Waterways regarding those or the cycling issue, or for me to ask them to do more than they had already offered. I did not uphold the complaint.

Case No 452 – moorings for residential boater

In 2004 Mr N obtained agreement from British Waterways to use a towpath mooring site he had identified for his boat. He says that he informed them that he lived on the boat. In 2008 he moved to a site across the canal when the towpath was closed and later designated as a visitor mooring site. Throughout the period he paid British Waterways mooring fees they requested for use of the sites. Later in 2008 a local resident complained about Mr N's boat being moored at the second site and, following Council involvement, in 2009 a patrol officer told him that he should not be living on the boat (there was no planning permission for residential use) and that he would have to move elsewhere. British Waterways did not have any residential sites close by and two alternative sites offered were not acceptable to Mr N. They were significantly further from his work and family and less pleasant, and he had not expected to have to move at that point. British Waterways said that if Mr N did not move by the time his licence expired in late 2009 they would not renew it. Mr N complained that that was not fair when he had been open with British Waterways from the start and always paid relevant fees and complied with rules and regulations. He wished to remain at the site but, if not, felt he should have some compensation for the upset and problems caused by the unexpected need to move.

British Waterways accepted that they had made mistakes, firstly in permitting the initial towpath mooring and then in issuing a permit for the second site when it did not meet the criteria for new online moorings. I told Mr N that I could not recommend that British Waterways allowed him to continue living at the site, when there was no planning permission for such use and it seemed likely the Council would refuse it. Following my intervention British Waterways offered a goodwill payment in recognition of the inconvenience caused by their mistakes. By this time, Mr N had been unable to renew his licence. British Waterways also agreed that he could have a prompt payment discount if he applied and paid promptly once he had moved. On that basis I felt content to regard his complaint as having been resolved.

Case No 467 – procedures for setting 2009-10 mooring fee

I did not uphold a complaint from a boater about the way his mooring fee for 2009-10 was set. British Waterways' pricing review was not published until 23 February 2009 even though an earlier policy document had said prices would be published in January. In order to give customers with renewals due in April-June 2009 more notice, officers set a lower interim rate for any facing a price rise of more than 4.7%. Those, such as the complainant, with later renewal dates faced the full price increase. He complained that British

Waterways staff either wrongly acted at variance with the published policy without adequate authority from the Board or wrongly failed to show that such authority was necessary. He felt it was unfair that he was charged more than those with renewals in the first quarter of 2009-10.

Having seen relevant delegation schemes, I found that staff did have the authority to determine the matter without reference to the Board, and saw no grounds for criticising British Waterways for not producing evidence to the complainant on the point. Annual price rises will always result in some people paying more than others who renew their mooring permits very shortly earlier. The failure to complete the review on time did not seem to have significantly disadvantaged the complainant: I had no reason to think he would have been asked to pay less if it had been completed sooner.

Case No 468 – power to charge for moorings and obligations regarding residential boaters

Mr O believed that British Waterways did not have power to charge for moorings. I could not see that it was so clear that they lacked such powers that I could say their actions amounted to maladministration. I advised him that if he wished to pursue this argument he would need to get a view from the Courts.

He also felt that British Waterways had the same obligations to boaters who wished to live on their boats as local Councils do to gypsies or travellers and that they should be following guidance in respect of that. I could understand why Mr O might like British Waterways to take on similar responsibilities, but I could not see that they had any obligation to do so and so I could not criticise them on that point. I did not uphold the complaint.

Case No 475 – sale of diesel by BWML

Mr and Mrs P complained that BWML had not permitted them to declare a 40%/60% propulsion/other use split (for tax purposes) when purchasing diesel for their boat: they had offered only 60%, 0% or 100% propulsion use. I said that if BWML's pricing structure did not meet customer needs then they would lose business: but that in itself was not evidence of maladministration or unfairness. They were entitled to sell fuel in the way they had chosen. However that pricing structure should have been made clear to Mr and Mrs P before the transaction began. British Waterways had already accepted that BWML were at fault in that respect and apologised. I could see no grounds for me to pursue matters further.



How to contact the Waterways Ombudsman

If you have a complaint about British Waterways you need first to use their own complaints procedure. Information about that is available from their website www.britishwaterways.co.uk, or by calling them on 01923 201120, or by email to enquiries.hq@britishwaterways.co.uk.

If you remain dissatisfied after completing British Waterways' complaints procedure then the Waterways Ombudsman may be able to help. I can be contacted at:

Waterways Ombudsman
PO Box 35
York
Y060 6WW

Telephone: 01347-879075

Email: enquiries@waterways-ombudsman.org

More information about the Waterways Ombudsman Scheme and how to complain can be found on the Scheme's website at www.waterways-ombudsman.org.

