



ANNUAL REPORTS OF
THE WATERWAYS OMBUDSMAN
COMMITTEE
AND
THE WATERWAYS OMBUDSMAN
FOR 2005-06

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Annual Report of the Waterways Ombudsman Committee 2005-06

1. This is the first annual report of the Committee. It first met as a full Committee in May 2005 and had a second full meeting in November 2005. Its task is to oversee the operation of the Waterways Ombudsman scheme and the independence and accessibility of the Waterways Ombudsman. It was established as one of the responses to a consultation exercise by British Waterways in 2003 on improving openness and accountability.
2. The Committee has eight members. Of those, three (including the current Chairman) are independent and three are appointed by the British Waterways Advisory Forum (ie from groups, such as users and businesses, with interests in 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.
3. 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;
 - to publish an annual report.

(Issues relating to the investigation or determination of complaints, both by British Waterways within its Complaints Procedure, and by the Ombudsman if subsequently referred to her, are matters for the Ombudsman alone, and the Committee has no part to play in those.)

4. If the Committee is not satisfied about the operation of the scheme, it may report its concerns to the Board of British Waterways and ultimately to the Waterways Minister and Scottish Minister or make public its concerns.
5. The first major task for the new Committee in 2005 was to appoint a new Ombudsman, as the then Ombudsman Stephen Edell wished to retire. A process of open competitive selection was used: the post was advertised in the press, and applicants were short-listed and interviewed for the post by the Committee. In June 2005 Hilary Bainbridge was appointed by the Committee as the new Ombudsman, and began work in July 2005. Hilary has substantial experience of Ombudsman work, having worked both within the Office of the Parliamentary and Health Service Ombudsman and as Deputy Local Government Ombudsman for the North of England. Further details are given in Annex D, following her report.
6. The second major task was to contribute to a review of the rules of the scheme. British Waterways had already agreed in principle to make certain changes following the 2003 consultation on openness and accountability. However a complete revision of the rules was carried out in 2005, as the previous terms of reference for the Ombudsman had been unclear in some other respects. The new rules are, in the view of the Committee, in line with current best practice.
7. The review of the rules incorporated the previously agreed changes but also clarified many other aspects of the scheme, and sought to ensure that the scheme would qualify for full voting membership of the British and Irish Ombudsman's Association (BIOA). BIOA gives recognition, in that way, only to Ombudsman schemes which fulfil a strict set of criteria relating to the Ombudsman's independence, accessibility to the scheme, the procedures and powers available and the implementation of recommendations. All the major Ombudsman schemes in Britain and Ireland are members. To date the Waterways Ombudsman scheme has had only associate membership but an application for full membership of BIOA has been made in the light of the changes brought about by the new rules.

8. The proposed new rules were reviewed in detail by the Committee in November 2005 and all the changes recommended by the Committee were subsequently agreed by British Waterways. The new rules (including full details of the Committee's role) are set out in full as Annex E following the Ombudsman's Report at the end of this booklet and can be seen on the Waterways Ombudsman page of British Waterways' website.
9. The Committee also considered an initial report from the new Ombudsman. They did not raise any concerns about the operation of the scheme at that point. Now the new Ombudsman and new rules are in place, further review of the operation of the scheme will be the main focus of the Committee's work in 2006-07.

Members of the Waterways Ombudsman Committee

Chairman

Professor Jeffrey Jowell QC, Professor of Public Law, University College of London; a member of the Royal Commission on Environmental Pollution and of the Board of the Office of Rail Regulation.

Other Independent Members

Michael Reddy, Deputy Adjudicator and Chief Executive Officer of the Office of the Independent Adjudicator for Higher Education.

Miles Smith, solicitor, formerly Director of Corporate Services and statutory monitoring officer at the London Borough of Croydon and now an Associate Director with KPMG.

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).

Sam Hollis, a solicitor at Athletes1 Legal, a sports law practice, which acts for the United Kingdom Sports Council, the Royal Yachting Association and a number of other sports governing bodies.

Nigel Stevens, director of Shire Cruisers and a former Chairman of the London Branch of the Inland Waterways Association and a former Chairman of APCO.

Members appointed by British Waterways

Terry Tricker, Board Member of British Waterways and chairman of its Fair Trading and Remuneration Committees; formerly a Board Member of Severn Trent Water Ltd and a chairman of an NHS Hospitals Trust.

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

THE WATERWAYS
OMBUDSMAN



ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN 2005-06

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INTRODUCTION

1. This is my first annual report as Waterways Ombudsman. The report covers the period from April to June 2005 when Stephen Edell was Ombudsman and July 2005 to March 2006 whilst I have been Ombudsman. I must take this opportunity to put on record my gratitude to Stephen for his excellent support and advice during the handover period. British Waterways staff also provided any information or practical help I requested during that time and I am grateful to them too.
2. The change of Ombudsman was not the only major change during the year.

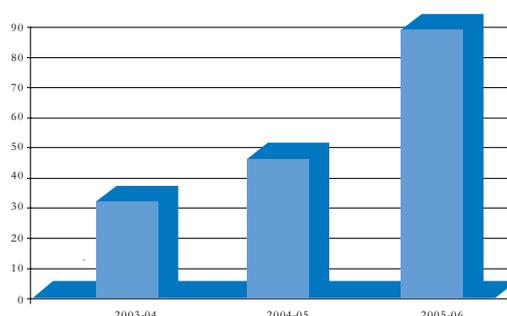
The Waterways Ombudsman Committee and Scheme

3. As explained in their own annual report, an Ombudsman Committee has now been fully established to oversee the operation of the Waterways Ombudsman scheme, though decisions on individual complaints remain, as always, with the Ombudsman alone. The Committee provides a firm structure to maintain and defend the impartiality and independence of the Ombudsman.
4. The long awaited changes to the Ombudsman's terms of reference (mentioned in last year's annual report by Stephen Edell) have now been made. A completely new, and much clearer, set of rules for the scheme, encompassing changes previously agreed in principle are now in place following agreement by the Committee and British Waterways about their terms. The rules are available on British Waterways' website and are annexed to this report. Major changes include:
 - provision for complaints about unfair treatment to be considered as well as maladministration;
 - removal of a previous restriction on considering any complaint which involves 'legal interpretation'. Though, quite reasonably, the Ombudsman still cannot deal with matters which are or have been considered by the Courts, and it is still not possible for an Ombudsman to give the sort of definitive ruling on a disputed point of law which only a court can give;
 - greater clarity on time limits to be applied to complaints;
 - power to consider complaints from businesses with an annual turnover of less than £1million;
 - power to make an award of up to £100,000 in compensation.
5. As explained in the Waterways Ombudsman Committee report, the new rules were designed to fulfil the strict criteria for full voting membership of the British and Irish Ombudsman's Association (BIOA). I have now submitted an application to BIOA for that category of membership and expect to have a decision in the next few months, after the application has been through their rigorous validation process. Full membership of BIOA will provide further evidence that the scheme (and the level of independence of the Ombudsman) meet the high standards the public are entitled to expect and I hope will help to improve confidence in that.

Workload

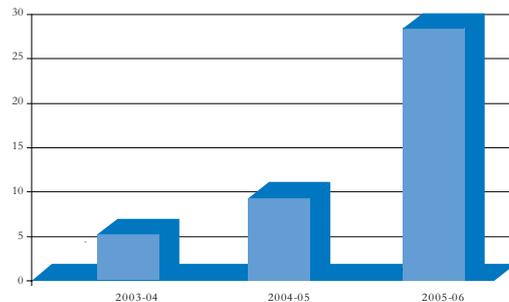
6. Stephen Edell reported a significantly increased workload last year. The increase is even more significant this year. 89 matters were referred to the Ombudsman compared to 46 last year and 32 the year before. (See Annex A for more details)

Enquiries Received



7. As always a significant proportion of these matters were outside the terms of reference of the scheme but there was also a very large increase in the number of complaints received which were within jurisdiction. 29 such cases were received in 2005-06, compared to 15 in 2004-05 and six in 2003-04. Three times as many decisions were made as last year (27 compared to 9), and that had been a significant increase on the year before. (See annex B for more details.)

Decisions on cases in jurisdiction



In 17 of those 27 cases the complaint was upheld wholly or in part.

8. Clearly one would have to question why there has been such a dramatic increase in the number of complaints decided by the Ombudsman over the last three years. The number of complaints made to British Waterways has risen, as has the proportion of complaints made which progress to the second stage of the Complaints Procedure, and the proportion which progress to me. Those three increases have all contributed to the very large rise in complaints to me. I have no doubt that one significant underlying factor is the improvement made to the Complaints Procedure in the last two years. Whilst I did not see the previous system in operation, I understand that potential complainants are now likely to be better informed about both the availability of the Complaints Procedure and how to approach the Ombudsman and to progress more smoothly through a clear complaints process. It is too soon for me to judge what other underlying factors might be affecting the number of complaints reaching me.
9. The increase in workload, combined with the handover of responsibility, has inevitably led to some delays in the processing of complaints during the year: no system or person can suddenly deal with three times as much work as before. However by the year end, having concentrated on casework, there were only 15 cases still under investigation (compared to 12 at the end of 2004-05). Seven of those were close to completion with a draft decision already having been prepared and issued to the complainant and British Waterways. Of the remaining eight cases which had not reached that stage, one was more than a year old, one was between six and nine months old and the remainder were less than three months old.
10. Not surprisingly most complaints investigated were from boaters, with a small number from businesses on or related to the waterways. However there were also significant numbers from what one might call neighbours of the waterways: people who live near British Waterways' land and who have issues about use or maintenance of that land or the waterway itself. Most investigated complaints were about the actions of British Waterways themselves, but two related to specific marinas operated by British Waterways Marinas Limited (BWML). Three investigated complaints related to Scotland and the rest to England.
11. During the year I have set up a simple computerised record system to record data on complaints, and registered under the Data Protection Act.

Investigation of complaints

12. Under both the old and new terms of reference the Ombudsman has considerable freedom, within what natural justice would permit, on how to investigate complaints. That is in everyone's interests as it enables the process to be adapted to the needs of each individual complaint. It is not simply a paper exercise. I have used that freedom to investigate complaints in varied ways. In different cases I have:

- obtained and examined photographs of a relevant site;
- visited the site myself where photographs might not convey the full picture adequately;
- obtained information from other organisations, eg from a Council website about their planning policies;
- obtained copy documents from British Waterways;
- visited British Waterways' offices to examine original records;
- spoken with complainants on the telephone and in person;
- interviewed British Waterways staff in person and on the telephone.

13. British Waterways have had to adjust to my particular approach to investigation, particularly increased demands for copies of full sets of documents and requests to interview individual staff members. However I am pleased to say that they have expressed willingness to co-operate with all my requests, and seem now to be getting more used to my approach.

14. I did however have to express concern in one case (not yet complete) where British Waterways omitted to mention that a crucial file of their papers was missing. This was not revealed to the complainant during British Waterways' own complaint investigation or to me when I first asked to see relevant documents. I was left to discover the problem when inspecting the original files. I have already made it clear to British Waterways that I would expect strenuous efforts to be made to locate any lost papers and to be told of any such problem at an early stage in any investigation.

Issues arising from complaints

15. The complaints I received covered a wide range of issues and no very major themes have yet emerged. I will mention a few particular issues which have emerged, the first two relating to the handling of complaints by British Waterways.

Handling of complaints

16. I would only uphold a complaint if I felt it had not already been adequately remedied by action under the Complaints Procedure: so in all the cases in which I upheld parts of the complaint, I felt there were matters that had not been adequately dealt with under the internal process. In many cases this is because of a difference of view on the conclusion to be drawn from the evidence and in some cases a difference of view about the relevant facts. In a couple of cases (one not yet complete) I saw evidence which suggested to me that British Waterways staff had initially led the complainant to believe that more action had been taken than was actually the case. For example, in case no 44 I criticised them for telling a complainant that a 'full risk assessment' was to be carried out and later that that had verified their concerns; but I discovered that no such assessment was ever documented. I was told that that was because the risk was so obvious. I felt the description of the process followed was misleading. British Waterways need to ensure that, when people express concerns or made formal complaints, their staff give a full and frank account of what has or has not been done so far.

17. Another significant issue relating to complaint handling arose in the course of another complaint. During some discussions following completion of the 2nd level of the Complaints Procedure, a member of British Waterways' staff responded to mention of the complainant's intention to approach me by asking if the complainant realised how much that would cost. Ultimately the cost of the

Waterways Ombudsman service does fall to British Waterways, and I could understand why that would motivate them to wish to see complaints resolved before they reach me. If that helps to get complaints resolved to the satisfaction of the complainants at an early stage, then that is a good thing. There is plenty opportunity to resolve complaints within the Complaints Procedure, and efforts should focus on resolving them then. However once a complaint has received a response from British Waterways following the 2nd level of the procedure, then the complainant is entitled to approach me. I therefore felt it was inappropriate (and maladministration) for British Waterways staff to try to dissuade the complainant from that, by referring to the cost or otherwise. I recommended in my report that training and information for British Waterways staff about the Complaints Procedure should emphasise the importance of trying to resolve complaints during the Complaints Procedure. It should make clear that, once both stages of that procedure are complete, efforts should not be made to dissuade complainants from approaching me, though that need not prevent continued efforts to resolve the complaint.

Complaint topics

18. Not surprisingly there were a number of complaints relating to mooring charges but each raised rather different issues.
19. Two complaints were brought by disabled boaters relating to their use of suitable moorings. Although the issues in each case were different, I was surprised to find (again in case no 44) that at the time British Waterways' only policy on access for people with disabilities was still in draft form. Lack of a properly adopted policy is likely to lead to further problems and I recommended that British Waterways move expeditiously to adopting a policy, and review their compliance with the Disability Discrimination Act in respect of moorings provision.

Implementation of recommendations

20. During the year British Waterways have agreed to implement all the recommendations Stephen Edell and I made. However such agreement in principle is not enough: appropriate action needs to be taken within a reasonable time-scale. I am keen to see that all recommendations made are actually implemented (unless there is a very good reason why not). However I did need to pursue actions on a couple of recommendations made by my predecessor which I discovered had not been implemented expeditiously. In one case I was assured in September 2005 that the relevant policy and procedural issues were being 'actively considered' and action would be 'determined and implemented' early in the New Year. But when I enquired about progress, the letter I received in January 2006 indicated that little or no progress had been made. I expressed my concern saying:

'...there is a very important issue of principle involved, affecting the whole credibility of the complaints system. If British Waterways wants to improve confidence in them and their complaints system, then actions recommended by the Ombudsman **must** be seen to be properly implemented within a reasonable timescale. If for some reason British Waterways feel they either need to amend the timescale during which they have promised action or (rarely) that circumstances have changed such that the Ombudsman might now feel the recommendation was no longer so relevant or pressing, then they should contact the Ombudsman about it. They should not simply let matters slip, for whatever reason, and hope that no one will notice.'

21. In response British Waterways told me that they had been equally disappointed to find that they had not followed through on the commitments they had given and that the incident had prompted them to review and improve their accountability process for ensuring that actions arising from complaints are followed through fully and promptly. Progress has now been made on the specific issues in that case and I will be keeping a close eye in the year ahead on actions being taken in response to other recommendations.

22. Action in respect of another of my predecessor's decisions (case no 5 of 2004-05) has also led to significant correspondence during the year. This is with regard to the question of licence fees for boats in co-ownership. I received a number of enquiries following the consultation paper on the fee structure for boat licences (in England and Wales) in June 2005 and the subsequent 'white paper' in November 2005. In response to queries both from the complainant in the original case and British Waterways following the issue of their 'white paper', I wrote a joint letter to both explaining my position. I made it clear that I had no objection to the text of my letter being made more widely available, omitting names of individuals. I am including that as an annex to this report. My position remains the same.

Plans for 2006-07

23. Having had to concentrate on basic familiarisation with the work, and tackling the high number of complaints, I have spent less time this year than I would have liked on other matters such as informal contacts with waterways organisations and developing the service further. I plan to work to remedy that in 2006-07. Plans for the year include:

- seeing through the application to BIOA for full membership;
- setting up a separate Waterways Ombudsman website (at present information is available only on the British Waterways or BIOA websites);
- developing more informal contacts with organisations with waterways interests (I have already accepted an invitation to speak at the NABO AGM);
- developing systems for promulgating information about my work, especially decisions made, in the interests of accountability and public awareness.

24. That work is in addition to the core work of handling complaints and enquiries. I will continue to keep a close eye on the workload and seek additional resources if they are needed.

Possible newsletter

25. I would like to say a little more on the last point of paragraph 23. My predecessor's practice was to provide, when he completed each case, a summary of the decision to British Waterways, who passed that on to the waterways press and any enquirers. The same summary was later published in the annual report. Summaries of decisions on all the cases I have completed, and those Stephen Edell completed during the year, are contained in this report. I have not issued any case summaries during the year, whilst deciding how I would wish to proceed. My current favoured approach would be to issue fairly short summaries of decisions directly myself, in batches as part of an email newsletter every few months, as well as in the annual report. I would be grateful to readers for any feedback on that possibility and expressions of interest in joining the circulation list if that goes ahead.

Hilary Bambridge .

Detailed data on enquiries – 2005-06

Group		
A	Not relating to British Waterways	19
B	Premature: Complaints Procedure not complete	38
C	Not in jurisdiction: over time limit	2
D	Not in jurisdiction: courts involved	1
E	Eligible for investigation	29
	Total	89

Given the large number of enquiries it is no longer appropriate to describe each as in previous annual reports, but I shall give a little more information about groups A and B above.

Group A

Three of the complaints related to the Environment Agency's responsibilities for waterways. However a number of people continue to assume that the reference to water in my title means that I can deal with complaints relating to plumbing, or water supplies to their homes.

Case example

A woman wanted 'an Ombudsman for my washing machine'. Having clarified that she was dissatisfied with the repairs carried out on it, I referred her to her local trading standards department for more detailed advice.



Some other complainants seem to have been given my number in desperation by directory enquiries when seeking an Ombudsman of a completely unrelated sort. Wherever possible I refer all people from this group on to another Ombudsman or agency which can help. Virtually all of these enquiries were made by telephone or email.

Group B

This group includes all enquiries made relating to British Waterways, which do not ultimately lead to a complaint which is eligible for my investigation. Some may involve one telephone call or email, but in other cases I may have two or three discussions with the complainant or correspondence on the matter. A few of these are more requests for information than complaints.

Case example

One enquiry was from a Norwegian sailor who emailed from Athens for advice about using the Caledonian canal on a voyage back to Norway. I sent him links to relevant parts of British Waterways' own and the Waterscape website. He emailed back to say thanks for my 'fast and good answer'.

However most of these enquiries are from people with a grievance about the actions of British Waterways, but who approach me prematurely. I encourage them to use and complete British Waterways' Complaints Procedure. A couple have come back to me to let me know that matters have been resolved to their satisfaction.

Case example

Mrs A, who is the warden of a sheltered housing complex, emailed me about her concern that water was leaking from a canal into the site. She had rung British Waterways about it on several occasions, but no permanent remedy had been found. I telephoned her to discuss matters. Initially she was reluctant to use the Complaints Procedure, doubting its effectiveness, and felt I should be able to consider the matters straight away. I explained that I could not do that and persuaded her to try the procedure. Having had a response under the second stage of the procedure, she asked British Waterways to let me have a copy of her letter of thanks, so that I could know the matter had been resolved to her satisfaction.

In the majority of cases I never know the outcome, unless I later receive an eligible complaint, after the Complaints Procedure has been completed. Those complaints then leave this group and are generally then investigated.

The complaints in Group B covered a wide range of issues, including moorings, fees, tree cutting, cycling on the towpath, damage to boats, attitude of staff, the boat safety scheme, water extraction and failure to pay an invoice. During the summer and autumn of 2005 there were a number of approaches relating to the consultation on licence fees and the subsequent white paper.

Summaries of all decisions on eligible cases

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Case No 1 – action following an emergency canal closure and handling of claim by claims assessors

A breach of a canal in September 2004 necessitated its temporary closure at 3 pm on the day it was discovered. The complainant entered the canal at about 8 am on the following day, passing the last available winding hole at which there was then no notice of the closure. After arriving at the point where the canal was closed, he telephoned British Waterways and discussed the matter with their representative. He then reversed his boat, which suffered damage. He claimed the cost of repairs, and British Waterways referred the matter to their claims assessors. The latter rejected the claim, and told the complainant that his only recourse was to litigation.

The complainant said that, when he telephoned British Waterways, he requested help but none was offered. The person to whom he spoke agreed that he had no alternative to reversing his boat. He considered that British Waterways should have posted a notice at the winding hole so that he could have turned his boat and avoided the damage. He thought that British Waterways should not have instructed the claims assessors, whom he considered to be incompetent. The assessors should also have known about British Waterways' Complaints Procedure.

British Waterways pointed out that the incident was an emergency, and considered that they dealt with it well. The person to whom the complainant spoke said that the decision to reverse was the complainant's alone. A notice was posted at the winding hole in the early afternoon of the day on which the complainant's boat suffered damage. They considered that the claims assessors were a reputable firm regulated by the Financial Services Authority, and did not accept that they were at fault in appointing that firm to deal with their insurance matters.

I considered that the complaint had to be considered in the context of the emergency which had happened. I thought that the only way in which the complainant could succeed in connection with his conversation with British Waterways' representative would be if I decided that failure to offer specific advice not to reverse and/or to offer immediate help constituted maladministration. In the light of the emergency situation and the complainant's ultimate responsibility for his own craft, I took the view that the conduct of British Waterways' representative was reasonable. I also decided that I could not find them guilty of maladministration in not posting a notice at the winding hole until about 24 hours after the incident, bearing in mind all the other activity required.

I pointed out that I had no direct jurisdiction over the claims assessors. I was not prepared to find British Waterways at fault for instructing the firm they did. However, I thought that the assessors should have told the complainant about British Waterways' Complaints Procedure when they rejected the claim. Their omission to do so must have been caused either by a failure by British Waterways to instruct them appropriately or a failure by them. Since they were British Waterways' agents, British Waterways were responsible for the error on either basis. I considered this to constitute maladministration. Since the complainant had not suffered any financial loss as a result, I recommended an apology.

Case No 2 – reasonableness of request by British Waterways to change long term mooring and entitlement to discounted mooring fees

Unusually, the complainant lives on a sea-going vessel moored in a Basin which is physically attached to British Waterways' canal network. He has done so for nine years. There is no planning permission for residential moorings, and there are no residential facilities such as waste disposal. However, British Waterways said at one point "British Waterways continues to adopt a policy of where there is no conflict with other users or local operational issues then residential boat owners are not a problem..."

The main issue related to British Waterways' request that the complainant move his boat to the other side of the Basin. There were already two vessels moored there, and the complainant's boat was the only one still moored on his side of the Basin. The complainant pointed out that British Waterways had knowingly allowed him to live on his vessel at his present mooring for a long time. He considered that the alternative mooring offered was unsuitable for his boat, dangerous in winter weather and non residential. British Waterways said that the complainant's present mooring was classified as a visitor mooring, and there were no residential facilities. The complainant had been given long notice of their request for him to move. They saw nothing wrong with the alternative mooring.

I considered whether British Waterways' policy of tolerating residential use of a vessel without planning permission constituted maladministration. I decided that, while it is not particularly neat, it is pragmatic and sensible. I also looked with particular care at the question of whether they were guilty of unfair treatment in requiring the complainant to move after nine years. I did not accept the latter's assertion that the alternative mooring was unsuitable for his boat or dangerous in winter weather. I pointed out that security of tenure at the mooring offered was as good as that available where the complainant was currently moored. On balance, I did not find British Waterways at fault in relation to the main issue.

The second complaint related to a 25% discount on mooring fees granted to the complainant in 2003/4 because the draught of his vessel was such that he could not access the main canal system. The complainant considered that he should have been given this discount at an earlier stage, and provided copies of two of British Waterways' publications dealing with discounts on other waterways. British Waterways said that the discount for restricted craft was introduced in 2003/4, at which time an article was published in *Waterfront*. It was therefore not available for previous years.

There had in fact been litigation over mooring fees in 1999 so any dispute about them before that time was outside my terms of reference. In respect of the period from 1999 to 2003/4, I pointed out that the complainant was granted the discount after the latter date because of the draught of his particular craft, rather than the nature of the waterway. His position was therefore different from that described in the publications provided by him. I did not consider that British Waterways were at fault in not applying a discount for the complainant's vessel before 2003/4.

I made no recommendation.

Case No 3 – charging moorers for electricity

The complaint was brought by a Users Association in connection with the cost of electricity supplied by British Waterways in their fairly remote area.

Before the introduction of Regulations by the Office of Gas and Electricity Markets, British Waterways made an inclusive charge to the members of the Association of 10p + 5% VAT per unit for their electricity. The effect of the Regulations was to require them not to charge more for electricity than they themselves paid, and to state the amount they were charging for it separately from other charges. British Waterways thereafter charged the Association's members the amount per unit which they paid the supplier for electricity, supplied, eg. 5.25p + 5% VAT, plus a facilities charge of 4.75p + 17.5% VAT. Also, the mooring charge for boaters with access to electricity was £4 per metre higher than the figure for those without such access.

The Association considered that the facilities charge should not include any element of profit, and was excessive. They also said that there was a charging overlap in that there was both a facilities charge and an extra £4 per metre on the mooring charge for those boats with access to electricity. Finally, they expressed concern over delay in implementing the new method of charging and in dealing with their complaint.

British Waterways accepted that the facilities charge should not result in their over recovering service/maintenance costs, and produced figures to support their assertion that it actually did not. They considered there was no overlap between the facilities charge and the mooring charge and that the latter was simply based on market forces in accordance with then policy.

Having reviewed the figures, I was satisfied that British Waterways did not make any profit out of the facilities charge, after taking into account the expenditure covered. I also concluded that the extra £4 per metre on the mooring fee was in accordance with British Waterways' policy (with which I cannot normally interfere) of basing the fees on market demand, taking into account the facilities available. I did not agree with the Association that there was an overlap between the facilities charge and the mooring charge. The former was designed to recover the cost of providing the electricity, apart from the charge paid by British Waterways to the supplier. The latter was "rental" for the mooring assessed in accordance with British Waterways' policy.

I did, however, consider that British Waterways were guilty of maladministration in connection with delay. Nonetheless, since the Association's members had not suffered any financial loss and British Waterways had already apologised, I made no recommendation.

Case No 4 – rights to vehicular access across British Waterways' land

The complainant has farmed land on either side of one of British Waterways' canals for several decades. There were originally two reservoirs close to the canal, which were separated by a causeway. The complainant used the causeway for access from his fields on one side of the canal to those on the other. Both parties agreed that there was at least a public footpath along this causeway.

British Waterways breached the causeway at least 32 years ago, and perhaps earlier, to link the two stretches of water. They built a footbridge over the breach which is suitable for pedestrians but not vehicular traffic.

The complainant claimed that either there was a public vehicular right of way along the causeway or that he had acquired a private one by long user. He therefore said that British Waterways had infringed his rights by not providing a bridge which was suitable for vehicular traffic. British Waterways denied that there was a vehicular, as opposed to a pedestrian right of way along the causeway.

The complainant relied in part on the Enabling Act and the judgement of Lord Woolf M.R. in Swan Hill Developments Limited v British Waterways Board. After detailed consideration, I decided that he was mistaken on that issue.

So far as the possibility of a public vehicular right of way was concerned, there were clearly some arguments on both sides. The area of the law concerned is technical and complex. I thought that a proper decision was only possible after full consideration of all the evidence and cross examination on it, and hearing detailed argument on the law. Since I am not in a position to conduct an investigation of that sort, I decided that I should not come to a final decision on the point, which (if in favour of the complainant) would bind British Waterways without any appeal.

Turning to the possibility of a private vehicular right of way, I saw no reason to doubt the complainant's assertion that it was possible to take farm vehicles over the causeway before it was severed and that he and his predecessor actually did so. Whether they acquired a legal right to do so would depend on a number of detailed factors. I did not need to go into these because my remit is only to consider whether British Waterways are guilty of unfair treatment or maladministration. They had a clearly arguable case and had invited the complainant to refer the dispute to Court if he was not satisfied with their view. I did not see how I could possibly say that in these circumstances their stance constituted either unfair treatment or maladministration and made no recommendation.

Case No 5 – closure of a temporary mooring following a request to improve access

In 2004 the complainant tied up at a 48-hour- mooring on the offside of a canal. The mooring was against a narrow path bounded by a continuous single rail fence. On the other side of the fence was a road without a pavement, which led after a short distance to a public house. The complainant had an elderly passenger on board, and asked British Waterways to modify the fence to allow easier access for such people in future. British Waterways subsequently closed the mooring.

The complainant said that British Waterways had used his request to close a very popular mooring. Responding to their case, he asserted that the 48-hour signs made it clear that British Waterways' argument that the site was simply a transient mooring for people to await better travelling conditions was wrong. In connection with hazards involving persons under the influence of alcohol and vehicles, he considered that boating had its own inherent dangers. He drew comparisons with other moorings and said that there would be few left if health and safety considerations were applied to all moorings in the country.

British Waterways pointed out that access to the public house from the canal was in any event available from the towpath side. They said that the closure related to that fact and to safety. They provided a Risk Assessment Report from a professionally qualified Health & Safety Adviser, which went into detail and concluded that "this is not a suitable location to be used as a mooring." British Waterways also acknowledged that "the waterway have not managed the situation effectively in terms of signage etc.." and conceded that "a consistent and coherent management plan for this particular site has not been developed" they agreed that they had not communicated the situation to the complainant as they should have done. They apologised.

In the light of British Waterways' acknowledgement and apology in relation to the relatively minor matters, I concluded that the only substantial issue remaining was the closure of the mooring. I decided that I could not possibly say that British Waterways were guilty of maladministration or unfair treatment in closing the mooring on health and safety grounds, on the advice of their Adviser. Even if the other moorings to which the complainant referred were unsafe, that was not a reason for perpetuating the situation at the particular one. I made no recommendation.

Case No 6 – information given when purchasing land from British Waterways

The complainant exchanged contracts in August 2003 for the purchase of land which he intended to use for investment and development purposes. It is adjacent to one of British Waterways' canals and is enclosed along part of its length by a wall of varying height. This wall is apparently in poor condition. Responsibility for its maintenance was a main issue in the complaint.

Before exchange of contracts, the complainant's solicitors enquired of British Waterways about any liability on the owner of the property in respect of the maintenance or repair of "... the canal or its banks", and any further information which might be of interest to their client. In reply, British Waterways indicated that they did not generally hold the owner of property liable in respect of maintenance or repair of the canal except when the canal banks were excluded from their interest, and said that the property had the benefit of a Surface Water Discharge.

The complainant's solicitors subsequently asked British Waterways about the ownership of the banks along the whole length of the canal where it abutted the property which he wished to buy. Shortly after exchange of contracts British Waterways replied that they considered that those banks were in their ownership.

Correspondence ensued, and in December 2003 British Waterways sought to draw a distinction between banks and waterway walls, and added that "the wall" was not in their ownership. They were not responsible for its maintenance or repair. They also said that the licence relating to surface water discharge had terminated in June 2002.

The complainant complained of "the attempt by British Waterways to renege on the information provided" in August 2003, and of inordinate delay in dealing with subsequent enquiries.

British Waterways' eventual case in relation to repair and maintenance of the wall was that ownership was to the water's edge. They did not own the wall, and were not responsible for its repair. So far as surface water drainage was concerned, they were prepared to grant a licence on terms to be agreed. I concluded that it was clear that British Waterways had made conflicting statements about the ownership of the banks. They should initially have produced a correct answer to which they could have adhered. Their failure to do so constituted maladministration. I recommended an apology but I did not recommend any compensation, because the maladministration did not cause any financial loss. The complainant had already exchanged contracts for his purchase by the time that British Waterways told him that they owned the banks and so was committed to buy the property regardless of what British Waterways had said.

I also considered that British Waterways' original inaccurate statement about surface water drainage constituted maladministration. I noted that the purchaser's solicitors had not made any further enquiries on receipt of that statement, and concluded that he was content with whatever the arrangement might be. I recommended that British Waterways grant him on request a licence to discharge surface water on the same terms as the one which had expired in June 2002.

I agreed with the complainant that British Waterways' delay in dealing with some of the enquiries was inordinate and constituted maladministration. I recommended an apology.

Case No 7 – consideration given to the effects of building a new bridge close to the complainants' home

The complainants live in a city close to a canal which was restored and refurbished in 2002. Before restoration the channel of the canal was only a few inches deep and it was crossed by a number of concrete deck bridges and a swing bridge.

The funders of the restoration required British Waterways to be appointed as the project manager. In turn, British Waterways appointed an in-house consultancy of the City Council as consulting engineers. The agreement between British Waterways and the owners of the canal required British Waterways, among other things, to manage and co-ordinate the performance of consultants under their contracts. The agreement between British Waterways and the consultancy required the latter to obtain planning permission for the restoration, negotiate with landowners affected by it and to carry out all necessary design work.

The complainants were consulted about restoration of the canal in general, but not about the design of the bridges which were necessary to replace the old ones in order to allow navigation. British Waterways submitted a planning application for the proposed restoration in August 2000. It was granted in January 2001 subject to conditions, including one requiring details of the footbridges to be erected to be submitted to the planning authority for approval. The details were subsequently submitted and approved, without reference to the complainants.

British Waterways had rejected the idea of replacing the old swing bridge, on the ground of anticipated vandalism. Instead, a bridge was eventually erected, with footings at the same point as the old bridge. Requirements of access for the disabled meant that it was approached by a long ramp on each side of the canal. The actual crossing was therefore further downstream, and close to the complainants' properties. It was at a height which enabled those using the bridge to look into the complainants' windows.

The complainants raised a significant number of detailed complaints, including some about the length of the Complaints Procedure and delay in response to their communications. However, their main concern was about the effect of the bridge on their lives. They said that they had lost their privacy and their view, and found it really oppressive. They considered this to be a breach of their Human Rights. They said that the situation might not have occurred if there had been proper consultation with local residents about the design of the bridge.

British Waterways accepted that the bridge was intrusive, and indicated that they would like to work with the complainants to provide some form of mitigation. They had suggested planting as screening, but this had been postponed at the request of the complainants. They referred to tight time limits for completion of the canal imposed by the funders, and said that it was a stipulation of the City Council that their in-house consultancy continued to be used to complete the design, with British Waterways in an overseeing capacity only. British Waterways appointed the consultancy to carry out detailed design of the bridges. The City Council had decided that the footpath which used the bridge must be retained, and the starting points for the ramps were determined by the route of the existing public right of way. They referred to major difficulties about removal of the footbridge, including the absence of funding.

In relation to the main complaint, I took Counsel's Opinion on the position in connection with Human Rights. She advised that British Waterways were not in breach of the Human Rights Act 1998, so I decided that they were not at fault in this respect.

I did however conclude that the complainants should have been consulted about the design of the bridge by British Waterways or some other body. I did not accept that British Waterways inherited plans from the council and could not alter them because of time constraints. Nonetheless, I thought that it was reasonable for them to delegate the design work to the consultancy, in view of the latter's experience and expertise in the area. On balance, I concluded that British Waterways were not at fault in failing to supervise the consultancy in relation to the design of the bridge, because the difficulty relating to the complainants' properties would not necessarily be apparent to a person properly exercising a supervisory function.

I accepted that British Waterways were guilty of maladministration in relation to information about the Complaints Procedure and delays in response to communications and recommended an apology.

Cases largely determined by Stephen Edell, but summarised by me

Case No 8 – repeated inappropriate behaviour by staff member, and mooring waiting lists

1. The complainant was on the waiting list for a permanent mooring. He spent time in his area of choice as a continuous cruiser. He complained mainly about repeated acts of intimidating behaviour by a member of the local British Waterways' staff towards him over a period of two years and about the way moorings in that area were allocated.
2. By the time of the investigation British Waterways had initiated disciplinary action against the staff member, following a series of complaints about him. Mr Edell concluded that the staff member's conduct constituted clear maladministration. British Waterways had already apologised to the complainant for the person's conduct. Mr Edell **recommended** that they pay the complainant £500 for the distress and inconvenience he suffered over a substantial period. The complainant also sought compensation for loss of earnings. Mr Edell said he or his successor would consider the matter further if he provided a sufficiently detailed claim within a month of the decision. He did not do so. I therefore made no further recommendation for compensation.
3. Most of the residential moorings in the area were let on the basis of an agreement between British Waterways and another organisation. Mr Edell concluded that British Waterways believed that it had a formal agreement with the organisation about the management of those moorings, when in fact it did not. He considered that they should ensure that all moorings are properly managed, often by direct action but sometimes by arrangements with third parties, and that they had not done so in this case. He regarded that as maladministration. He **recommended** that British Waterways should exert proper control of all the moorings in the area, and in particular should formulate and implement proper policies on the allocation of vacant moorings (including the allocation of more than one mooring to the same person); the circumstances in which they would grant consent to subletting or parting with exclusive use of moorings; the transferability of moorings, and set up and maintain a proper waiting list for moorings. They should also set up and maintain a proper waiting list for moorings and publish details so far as is compatible with the Data Protection legislation.

4. He did not find British Waterways guilty of maladministration on various other issues related to refusal of permission to use winter moorings, failure to supply adequate moorings in the area, and issues relating to fines for overstaying.

Case No 9 – handling of a request for an easement to cross British Waterways’ land

1. The only access to the complainants’ home was across land owned by British Waterways. For many years they had had a licence agreement with British Waterways to use the access, but when they were considering selling their home in 2004 asked British Waterways to grant a permanent easement. The complaint related to the parties’ inability to agree what the proper price should be for the granting of an easement, whether British Waterways should have adhered to an offer made to do so for a certain sum and an alleged inaccuracy in a boundary plan which led to a request that British Waterways should deduce their title to the land concerned.
2. Mr Edell concluded that in the particular circumstances, where inconsistencies between plans raised doubts about the accuracy of British Waterways’ plan, he would have expected them to agree to deduce title subject to the complainants agreeing to bear the costs of doing so. He regarded the failure to do that as maladministration and **recommended** that they did so.
3. Generally he saw no evidence of maladministration or unfairness in relation to the dispute about the proposed price, though made it clear that he had neither jurisdiction nor the professional skills to determine what would be the correct amount.
4. However he did criticise British Waterways for statements in initial correspondence when they had said first that no offer had been made, and later that no offer capable of acceptance by the complainants had been made. He accepted that the letters may have intended to convey the message that no offer capable of being converted into a legally binding contract by acceptance had been made. But if that was the intention the crucial letter should have said that. He **recommended** an apology. However Mr Edell was not satisfied that the (admittedly legally unenforceable) offer was unequivocal. He therefore did not find British Waterways to be at fault for later refusing to proceed on that basis.
5. I dealt subsequently with one outstanding issue relating to compensation. I **recommended** a payment of £150 in respect of the distress associated with the apparent written denial that an offer had been made.

These summaries vary in length, largely depending on the potential for wider significance of the decision: but also upon other factors including the need to avoid including detailed, confidential information relating to complainants. The case numbers are not always consecutive as my practice is to number all new complaints or enquiries when they arrive, and many are not within jurisdiction for various reasons (usually because they have not yet completed British Waterways' Complaints Procedure).

Case No 10 – mooring charges

1. The complainant believed that mooring charges at the site where he, and other members of a club (on whose behalf he complained), moored were unreasonable given the lack of facilities at the site and charges at other sites in the area. He had been in dispute with British Waterways over the matter for about ten years.
2. I explained that I could not consider his complaint so far as it related to the mooring matrix system in use before 2002, as it was outside the time limit for complaints. I could find no evidence that the more recent policy on mooring pricing had been applied wrongly in this case. Although the site had fewer facilities than many others, it was one of the cheapest British Waterways' moorings on the canal concerned. That did not support the complainant's contention that non-existent facilities were effectively being charged for. I could not see any reason why under the current policy, British Waterways should only be charging 50% of the normal rate as the complainant had suggested. Some independently managed moorings in the area were cheaper, but I was satisfied that they were not directly comparable. It also seemed to me that if moorings there were equally desirable to the site used by the complainant and there were vacant spaces, then moorers from the complainant's site would be moving across. In fact that did not seem to be the case and there was a waiting list for places at the complainant's site. I did not uphold the complaint.

Case No 11 – compensation for damage to boat caused by obstruction and loss of enjoyment of holiday

1. Mr A's boat was damaged in two separate incidents on the River Severn. He complained that British Waterways had failed to take adequate steps to keep the river free of obstructions and/or to warn him so that he could avoid them. He believed that they should recompense him for the cost of the repairs and the loss of planned holidays on each occasion.
2. British Waterways had accepted that they should have warned Mr A about the obstruction on the first occasion and agreed to pay for the relevant repairs. I upheld Mr A's complaint about their refusal also to pay compensation for the loss of enjoyment of the holiday by the party of four people. I **recommended** a payment of £400 towards that in total.
3. Regarding the second incident, I considered the question of whether, but for maladministration by British Waterways, the incident would have been prevented. I concluded that that was not the case and did not uphold the complaint.

Case No 12 – assignment of commercial tenancy

1. For several years the complainant ran his business from premises on British Waterways' land. He had an agreement to do so with a third party who were the tenants of British Waterways, but he never had the benefit of a formal sub-lease. The complainant, the tenants and British Waterways had discussions about that possibility, but relations between the complainant and the tenants had become difficult and no agreement was reached. British Waterways allowed the first tenants to assign the main lease to new tenants without the matter being resolved. Relations between the complainant and the new tenants were also poor which affected the operation of the complainant's business. He complained that British Waterways wrongly went back on an agreement that they would not allow the main lease to be assigned until a sub-lease of his site was properly agreed and documented.

2. It was clear to me that for a period of more than a year British Waterways made various efforts to facilitate the issue of a formal sub-lease to the complainant: those included getting a first draft of a sub-lease drawn up, facilitating meetings between parties and at one point telling the first tenants that the matter needed to be resolved before they would agree to the main lease being assigned. When, at the end of that period, a further meeting was proposed to pursue the matter the complainant said he was not willing to be in the same building as one of the first tenants. British Waterways had already gone further than they were strictly obliged to do to try to help resolve matters. I could not see that the fact that they did not go further was evidence of maladministration. Nor, in the circumstances, did it seem very likely that further efforts would have resulted in any resolution.
3. I thought that it would have been helpful if British Waterways had given the complainant notice that they were likely to change their approach if he did not agree to another meeting, but I thought it extremely unlikely that a meeting would have been fruitful in any event. I could not see that the complainant's problems were attributable to the maladministration or unfairness by British Waterways which was alleged.

Case No 16 – mooring fees when some boats, but not others, have electricity bollards

1. In 2003 British Waterways installed electricity supply bollards for some, but not all, of the moorings at the site where Mr B moors his boat. Mr B complained that it was unfair that he had to pay as much for his mooring, without a permanent electricity supply, as other moorers on the site paid when they did have one. He believed he had therefore been paying for a service he had not been receiving and should receive a refund of part of his mooring fees. British Waterways accepted that there was an 'anomaly', which would be addressed in a new pricing strategy in the area for 2006-07 onwards. However they argued that the anomaly was caused, not because Mr B was paying extra towards the supply of electricity, but because those with access to electricity had not been asked to pay more.
2. It appeared that British Waterways accepted that it would generally be fair for those on the same site with access to electricity to pay more than those who do not have that facility:
 - they had referred to the present situation on the relevant site as an 'anomaly';
 - at a number of sites they do charge differential rates depending on whether or not there is access to electricity.

I agreed.

3. I said that, if Mr B's view (that he was in effect paying for an electricity supply to which he had no access) was correct then I would expect to see a higher than average rise in mooring fees at the site at the time when electricity was installed. That would indicate that the installation of electricity had been reflected in a higher price due to improved services. However the price increases at the site in the period when electricity was installed were actually less than average in the region.
4. Therefore, on balance, I was prepared to accept British Waterways' argument that Mr B had not suffered any material injustice, as the price did not appear to have been increased to reflect the installation of electricity. In effect it seemed that it was not that he was paying for a service he did not receive, but that some other people had been lucky enough to receive the additional service for free. Whilst I could see that that might feel unfair to Mr B, it did not mean he had suffered any actual financial detriment. I might have been concerned if British Waterways intended to let the anomaly continue indefinitely: but they were not. On balance then, I did not uphold the complaint.

Case No 17 – arrangements for charging for and maintaining a mooring where a disabled boater had himself provided facilities

1. Mr C and his late wife were disabled. In 1992 they could not find any local mooring facilities suitable for their use. They obtained the consent of British Waterways to build suitable facilities on British Waterways' land. Mr C paid for the materials and the installation of services. He then maintained the site both for his own boat and for some other disabled boaters. British Waterways charged Mr C 50% of the usual mooring fee.
2. In December 2004 Mr C was told that British Waterways intended to phase out that discount. Mr C complained that:
 - it was unfair for British Waterways to take over maintenance of the site and charge him the full cost for facilities which he provided when he was disabled, and when a previous chief executive had said he was putting the land concerned into Mr C's care;
 - that British Waterways did not go about making such a change in the right way; and
 - that they had not provided adequate facilities and maintenance on other parts of the site whilst also increasing charges there, and in particular they had not taken adequate action about dog fouling on one part of the site.
3. Whilst I would be likely to have had concerns if British Waterways were to charge disabled boaters more than others to moor, I could not see that (if British Waterways provided the facilities) they were under any obligation to charge disabled boaters less, for equivalent services. The key question was whether British Waterways had taken adequate account of Mr C's very significant contribution his own mooring. I could not see, when no formal agreement was made to that effect, that Mr C was necessarily entitled to receive a 50% discount indefinitely. Even those who moor at the bottom of their own gardens are expected to pay at that rate. On the other hand, I did not believe that it would be fair for Mr C to be left worse off because he provided the facilities himself than he would have been if British Waterways had provided them.
4. I had not seen any detailed costings which would prove the case either way. I discussed with Mr C whether he might be able to provide figures for his expenditure on developing and maintaining the site, to compare to the benefit he had received in reduced fees. But Mr C was reluctant to provide such information, and I was therefore unable to make any specific recommendation on the question of charging.
5. However I concluded that Mr C's concerns about how the matter had been handled were entirely justified. I could understand why British Waterways might want to set up more formal arrangements about the site, but they went about it in a very clumsy way. Within a year of sending a letter saying they would honour the historic 50% fee reduction, they unilaterally announced that they had decided to end that and that they were also going to take over responsibility for maintenance. British Waterways said the first letter was in the context of the 2004 price increase only but accepted the letter should have been more explicit about that. They accepted that they had not been sufficiently clear in their written and verbal communication and that they owed Mr C an apology for that.
6. I thought it particularly regrettable that someone, who had made the contribution to facilities for disabled people on the site which Mr C had, should be notified of the proposed changes out of the blue by a standard letter. I considered that it was maladministration, in the very particular circumstances of this case, for British Waterways not to consult Mr C before deciding exactly what change if any to make to the arrangements. I upheld this aspect of the complaint and **recommended** that British Waterways should now make the apology to Mr C which they had already agreed they owed him.



7. It became apparent to me that future arrangements for care and maintenance of the site were also an important issue to Mr C. If he believed that he had acquired any formal legal rights, regarding care and maintenance of the site and ownership of the facilities he installed, then he could settle that matter in the courts and I did not see that I should intervene. If not, then it was a matter for discussion between him and British Waterways. I **recommended** that British Waterways continued recent attempts to engage with Mr C in a dialogue to try to agree a way ahead on that point. I recommended that, if those attempts were not fruitful, they considered having a further discussion facilitated by someone with appropriate skills and who had not been involved in the issue before.
8. I made it clear to Mr C that I would need a complaint from other service users affected before I could consider specific issues relating to their services and charges. I could see no basis for saying that British Waterways' decision to take other action to prevent fouling by dogs, rather than to fence off part of the area used by a charity (as suggested by Mr C), was evidence of maladministration. It would appear that the status of this area was also somewhat unclear. However I **recommended** that British Waterways consider whether it might be helpful to have a written agreement with the charity about their use of the site, and whether a 'dogs on leads' sign would be helpful.

Case No 19 – action in respect of over-staying boat

1. In 2004 Mr D moored a hired boat (in which he and his family were on holiday), intending to stay overnight at the mooring, before returning the boat to the hirer. That evening they found another boat moored nearby with its engine running continuously, creating fumes and noise. The other boater refused to turn off his engine. The hire firm told Mr D that the offending boat had been on a 24 hour mooring for some days and they had already reported his antisocial behaviour to British Waterways but no action had been taken. Because of the actions of the other boater Mr D returned home that evening, losing a day of his holiday. He complained that British Waterways had wrongly not taken action earlier about the over-staying boat, which led to him and his family losing part of their holiday.
2. I had no doubt that Mr D and his family were justifiably upset by their unpleasant experience that evening: but that was actually caused by the neighbouring anti-social boater, not by British Waterways. What I considered was whether there was evidence that, but for maladministration by British Waterways, this bad experience would have been prevented. On balance, I thought not.
3. However I was surprised to find that an earlier call about the offending boat from the hire company was not logged in any way. In response to the draft report British Waterways told me that they were about to start logging calls at the office involved. Whilst clearly they need to respond to calls as promptly as they can, they will not always be able to respond immediately. I could see no reason why the call from the hire company should have taken the highest priority. Furthermore I would not generally think it unreasonable for British Waterways to try persuasion with offending boaters as a first step, before considering more formal action. From what I heard of this boater's subsequent actions (and Mr D's account of the boater's refusal to switch his engine off) it does not appear that the man was likely to have responded positively and moved on, even if a patrol officer had visited earlier. It seemed likely that, as was eventually the case, more formal action would have been needed and this could not have come to fruition in time to prevent Mr D from suffering as he did. Therefore I did not uphold the complaint.

Case No 20 – fees for end of garden mooring and handling of the issue

1. Mr E had a mooring alongside land he owns on the Rochdale canal since 1990. He did not pay a mooring fee. After management of the canal was taken over by British Waterways, in 2003 he was told that they intended to charge him for an end of garden mooring: at 50% of the rate for towpath moorings. Mr E had been in dispute with British Waterways on the matter since then.

2. Mr E complained that:

- British Waterways had never produced any valid legal basis for their charge;
- had handled the matter badly:
 - with delays in correspondence;
 - giving inadequate and inconsistent explanations of their powers and the fee structure; and
 - in 2004, unreasonably withholding his licence.

3. I could see no basis for me to conclude that British Waterways were wrong, or acting maladministratively in saying that they may charge Mr E for his mooring permit:

- the licence does not cover rights to long term mooring;
- British Waterways are allowed to charge for services;
- on the face of it (and as court cases quoted by British Waterways apparently concluded) it does not seem unreasonable for there to be a charge if one person wishes to have exclusive use of part of the canal to moor their craft;
- even when Mr E did not have to pay a mooring fee in 1990, the Rochdale Canal Company told him only that no mooring fee was required 'currently'. There appeared to be an implication that they believed they had power to charge.

I could not give a definitive legal interpretation, and could not rule out the possibility that a court might reach a different view: but I felt that British Waterways had made a reasonable case for charging Mr E. I did not uphold that aspect of the complaint.

4. Generally British Waterways had responded to most of Mr E's many letters within a reasonable time. There were two very significant exceptions, which were clearly indicative of maladministration and I upheld Mr E's complaint in that regard. I recommended that British Waterways should apologise to Mr E for these delays, and review whether improved systems for dealing with such correspondence are required to reduce the risk of similar problems affecting others in future. If they had not done so already they should provide a response to one letter.



5. I could understand why Mr E was concerned that on two occasions regional staff sent him information sheets explaining why payment was required for end of garden moorings, based to a large extent on a court case about the Lancaster canal in 1992: but their lawyer told him that the requirement to pay was independent of that court case. Whilst I could see that the two approaches were not necessarily incompatible, I could see that they would appear inconsistent to most people without further explanation. To that extent I upheld the complaint about explanation of British Waterways' powers. I **recommended** that British Waterways should review the information sheet, having taken advice from their lawyers, and send Mr E their definitive view on that point.

6. If you accept, as I did, that it was not unreasonable for British Waterways to say that Mr E could not use his mooring without paying a fee then, when he had not paid the fee, that mooring could not be said to be a mooring where he could lawfully keep his boat. So whilst I thought it would have been better to have given Mr E some earlier warning that the dispute could affect his licence, I did not criticize British Waterways for linking the two. However I did criticise them for cashing Mr E's licence fee cheque, then declining to issue a licence over a month later. If British Waterways were not going to issue one they should not have cashed the cheque. They should also have told Mr E their decision to refuse his licence sooner: as had already been accepted. I **recommended** that British Waterways should apologise for cashing Mr E's cheque and review their systems to ensure that in future cheques for licence fees were not cashed unless a licence is being issued.

7. The dispute between Mr E and British Waterways took up a disproportionate amount of time and energy of both. In my view both parties needed to take some responsibility for that. I **recommended** that British Waterways should pay Mr E £100 in recognition of the extra time and trouble caused to him as a result of their failings.

Case No 23 – dealing with complaints of anti-social behaviour

1. Mr F and neighbouring residents had suffered from anti-social behaviour by people in an area, at the bottom of their gardens, where there is public access along a canal and round a lock. He complained that British Waterways had not taken adequate action either to prevent such behaviour or to reduce its effects on residents. He also complained that they had not kept to a commitment to plant climbing greenery to provide additional screening.
2. I had no difficulty in understanding why Mr F was aggrieved that he had not been getting the usual quiet enjoyment of his home and garden. However at root the problem was caused by the anti-social behaviour of other people rather than by British Waterways. On the whole I thought that British Waterways had responded properly to Mr F's concerns. They had:
 - liaised quite extensively with the police;
 - erected a substantial fence;
 - responded to requests for additional planting of parts of the area, on two occasions, with thorn bushes, climbing plants and brambles.
3. I did however have one concern, and that was about a commitment given in a letter to Mr F's MP in May 2005. That said that British Waterways had agreed to plant additional 'vines' for the fence. However the only such planting had been done the previous year. British Waterways told me that there was insufficient room to plant any more climbing plants. In my view a commitment of the sort in the letter to the MP should not have been given unless it could be kept. If, exceptionally, it subsequently proved impossible or inappropriate to keep it, Mr F should have been told and given an explanation. That did not happen even when he first reminded British Waterways of the commitment. It only seems to have been picked up following my enquiries and when his MP intervened. In this one respect, of failing either to honour the commitment to plant additional vines or explain promptly the change of plans, I upheld Mr F's complaint of maladministration.
4. From the photographs I had seen, I was inclined to accept the view of the landscaping contractors that there was no longer sufficient room (or light) for additional climbing plants to grow well on the canal side of the fence. I was pleased to note that efforts were in hand to improve the screening further by planting climbing plants on the other side of the fence. I **recommended** that, in recompense for the distress caused by the maladministration I had identified, British Waterways should pay Mr F £40 (though he subsequently declined to accept it).

Case No 24 – lifting of boat at marina and damage allegedly caused

1. Mr G complained about events surrounding the lifting of his boat by British Waterways in September 2004, whilst major improvement works were carried out at the marina where he moored. He complained that:
 - he was telephoned by British Waterways' staff and asked if the boat could be lifted for two or three weeks, but it was not returned to the water until March 2005;
 - after the boat had been returned to the water, the windscreen was cracked, one of the ventilator caps was missing, and the cabin was soaked because of the missing cap. The curtains and ledges were covered with black mould. The bilge was overflowing because he had not been able to get access to pump it out.

He felt he should have a full refund of his mooring and licence fees for the period. He blamed British Waterways for the damage to the boat.

2. As the works were described by British Waterways as major improvement works, it seemed to me that they must have been planned some time in advance. That should have given British Waterways adequate time to give owners 28 days notice in writing of the likely need to move their boats, as in the mooring terms. Instead the only notice given to Mr G was a telephone call, and a misunderstanding about the time period ensued. Furthermore it appeared that the boat was out of the water longer than anticipated: British Waterways said variously that two or three months was expected. In fact the boat was out of the water for about six months. British Waterways had already accepted that there was a breakdown in communications and apologised. I felt they did not give proper notice and that was maladministration. I **recommended** that, when any future major improvement works are planned at marinas or moorings, those plans included, wherever possible, giving customers whose boats will have to be moved significantly 28 days written notice of the move, in line with the terms and conditions for long term moorings. Especially where boats are to be lifted, that should include as accurate a prediction as possible of the period involved.
3. The standard terms for moorings rightly say that British Waterways will refund any expenses reasonably incurred because they moved the boat. British Waterways had already refunded Mr G's licence fee for the period his boat was out of the water. Mr G felt that the full mooring fee should also be refunded. I did not agree. He did still have the benefit of a place to keep his boat. A reduction of the mooring fee for the period by half (a quarter of the annual fee) as already offered by British Waterways, seemed appropriate.
4. However I was concerned about the damage to the boat. It was probably impossible to prove the cause of the internal wetness with any certainty. It seemed to me that the damage would not have occurred (or at least not have been so severe) had British Waterways not lifted the boat. That is because Mr and Mrs G normally visited regularly (even in winter) and it seemed that, had the boat not been out of the water, they would be likely to have identified and dealt with any developing problem much sooner.
5. Once it was clear that the boat was going to be out of the water for significantly longer than anticipated, then arrangements should have been made for access from time to time to check on the interior. In my view British Waterways should have offered that facility, and Mr G would have been wise to seek it when it was not offered. In any event, because of a disability, Mr G may well have needed extra assistance with that from British Waterways. I would expect them to take his disability into account if they were aware of it. In my opinion, part of the cost of repairing the damage to the interior of the boat should properly be regarded as an expense reasonably incurred because British Waterways moved it, but not the full cost because:

- Mr G also had some responsibility to seek to check on the boat's interior; and
- some damage might have occurred in any event.

I **recommended** that British Waterways should make a further payment to Mr G of £80 as a contribution towards the cost of remedying the damage within the boat.

Case No 31- threat to remove boat

1. Mr H complained that British Waterways were wrongly seeking to apply provisions of Section 8 of the British Waterways Act 1983 to remove his boat in that:
 - it was inappropriate when his boat was not sunk, stranded or abandoned and was not moored without lawful authority; and
 - they had not first given him a reasonable opportunity to respond to their concerns about the state of his boat, either before issuing a Section 8 notice in 2005 or in the period since;
 - they had not taken adequate account of the views he had put forward.

2. The fact was that Mr H's boat did not have a boat safety certificate or licence. I could therefore see no basis for me to question the view taken by British Waterways that it was moored without lawful authority and that they were entitled, in law, to serve a Section 8 notice.
3. Mr H also complained that he had not been given a reasonable opportunity to respond to British Waterways' concerns either before or since the Section 8 notice was issued. Having moved rather slowly in the past, British Waterways started moving quite quickly in 2005. Looking at the situation as a whole, over several years, more than sufficient time had been allowed for Mr H to bring the boat up to the usual expected standards. But I could see why Mr H might have been slightly surprised by a letter in February 2005 giving him a month to produce a plan of action to remedy matters, and the subsequent issuing of the Section 8 notice. His boat had been moored there for many years without a licence or a boat safety certificate. Its condition had been raised with him in 1999, 2001 and 2003 but no formal action was taken on any occasion. He had been told at least twice during that period that he needed a boat safety certificate. He then heard nothing on the subject for about two years until receiving the letter of February 2005. As British Waterways had said, if anything they let the matter go on too long. I suspected this might have encouraged Mr H to have a false sense of security.
4. I did not think it was unreasonable to allow a month for production of a plan of action. However I could see that it might not have been feasible to have resolved all the details of a major scheme of work in that period. Allowing only a further 28 days for work to be completed was also likely to be unreasonable if significant professional input was required and when replacement parts might well have to be made specially. I agreed that the letter of February 2005 might have been worded better, however it made it quite clear on which day, lacking a plan, the notice would be issued. I could not see that Mr H could reasonably expect his plan, sent in at 7.30pm that day, to be in time to forestall issue of a notice. Given the long history of this issue, and Mr H's belated and quite embryonic plan, I could understand why British Waterways were not inclined to withdraw the Section 8 notice or to be swayed by his subsequent representations.
5. So in sum, I believed that it would be reasonable to expect Mr H to have identified clear first steps (eg a firm booking for a survey) within a month, but that there was maladministration in asking for a fully detailed plan in that period and for work to be completed in a further 28 days. However I did not see that as yet that had caused any material injustice to Mr H. Because British Waterways agreed to put on hold further action pending the outcome of his complaint, he had had over nine months to complete his planning, do any necessary repairs and obtain a boat safety certificate. That should have been sufficient time to do so. If he had now obtained a certificate, I encouraged him to inform British Waterways and obtain a licence. British Waterways were right to have concerns for the safety of boaters and others in the area (as well restoring equity with other boaters who do comply with safety and licensing requirements). However on that basis, if Mr H had a certificate and licence, no useful purpose would now be served by enforcing the Section 8 notice. I **recommended** that if Mr H was able to produce a valid boat safety certificate to them within two weeks of the date of the report, then British Waterways should not enforce the Section 8 notice.

Case No 44 – decision to prevent vehicular access alongside linear moorings and effect on a disabled boater

1. In 2005 British Waterways closed to vehicles a track running alongside linear moorings because of concerns about its safety. The complainant felt that British Waterways had not properly considered his arguments about why the track should remain open and had wrongly deprived disabled boaters of easy access to their boats. He said he had been unable to access his boat or to use it since.
2. British Waterways had already apologised for the fact that initially they failed to communicate properly with boaters about the issue. However I had an additional concern about their communications. They told the complainant that at first there had been a temporary closure while a 'full risk assessment' was carried out, and that that risk assessment had verified their concerns.

However I discovered that no assessment had been documented as the risk was judged to be so clear and obvious. I felt the description of the process followed was misleading, making it sound more formal and technical than was apparently the case and that that was maladministration. I **recommended** that British Waterways should apologise.

3. However, having visited the site, I had no difficulty in understanding why British Waterways were concerned about the safety of vehicular access along the track. The fact that there had apparently never been an accident was probably an indicator of the driving skills of those using it, rather than an indicator that the track was inherently safe. I did not uphold the complaint about the consideration given to the complainant's views that the track could remain open as it was.
4. I also considered whether British Waterways had then given proper consideration to the appropriate action to take in respect of disabled moorers and the complainant in particular. Removal of vehicular access was likely to cause problems for any moorers with mobility problems, and British Waterways needed to consider carefully their approach to that, especially in the light of their obligations under the Disability Discrimination Acts. Whilst I could give a general view about whether British Waterways were guilty of maladministration, only the Courts could determine whether in fact they had broken the law in that respect. I advised the complainant that he had a right to approach the Courts if he wished.
5. Service providers are required to take 'reasonable' steps to facilitate access to services for disabled people. I could not see that British Waterways could reasonably be expected to remove this difficult access track or to alter it sufficiently to make it safe for vehicles, nor was there any other route which could avoid it. So I focused my attention on whether British Waterways had properly considered how they could provide a reasonable alternative method of making the moorings service available to the disabled complainant.
6. British Waterways plainly had given some consideration to that. Some other options had been put to the complainant. I had sympathy for his view that some were impracticable. However, until receiving my draft report, he had been reluctant to consider any alternative options, such as the use of the mooring closest to the road or the suggestion that a mooring might become available at the adjacent marina. British Waterways said that that was the only mooring in the area suitable for someone with a mobility problem: but they said it was not controlled by them. Having seen my draft decision the complainant decided he would consider a move to the marina if a place could be found quickly and if a way could be found to move his boat there.
7. I was concerned that it appeared that British Waterways did not have any moorings in the area suitable for people with mobility problems. That left room for doubt about their compliance with disability legislation in that regard. They were only able to provide me with a draft policy on access for people with disabilities, though said that all new moorings were compliant with disability legislation. However, in this particular case it seemed to me that the reason the complainant did not yet have the benefit of an alternative means of providing a moorings service was his previous reluctance to consider or engage in discussions about alternatives, rather than because of a failure on British Waterways' part.
8. In all the circumstances here it seemed to me that it would be maladministration for British Waterways not to make reasonable provision to enable the complainant to gain access to his boat to repair it sufficiently so that it could be moved. Although he had raised this point with British Waterways, I had not seen any evidence of any specific reasonable offers of a solution to that problem. Whilst his previous reluctance to consider any action other than the re-opening of the track, had not made their task easier, on balance I felt that British Waterways were at fault in not having dealt specifically with this more immediate issue. I **recommended** that British Waterways should:
 - move expeditiously to adopt a policy on provision of access for people with disabilities and review their compliance with the Disability Discrimination Act in respect of moorings provision;



- try again to engage in dialogue with the complainant about suitable adjustments they could make to the mooring service to meet his needs. If, as appears to be the case, there was no reasonable adjustment to the service provided at the present moorings (other than re-opening the track) which would enable him to continue using his present mooring, then they should:

- offer him reasonable assistance in obtaining another available mooring nearby (such as in the nearby marina) which is suitable for someone with his disabilities; and
- Either provide assistance to enable him to have reasonable access to his boat to repair it sufficiently to enable it to be moved to a suitable new mooring; or move the boat to the new mooring for him.

Case No 47 – repair of road and closure of path

1. The complainant was concerned about how British Waterways were managing land they owned near his home. He complained that they had taken an unreasonable time to repair a road (which was prone to areas of flooding in wet weather). He also complained that they had not given full and proper consideration to the matter before closing a path, which the public had been using, across land awaiting redevelopment. He complained that closing the path and associated works breached planning regulations, that British Waterways had failed to consult residents, that they had acted arbitrarily following objections by residents to an unrelated planning application and had failed to give any reason why allowing the path to remain open would not be safe.
2. The complainant had asked for work to be done to the road in August 2004. In November he was told that some work would be done, but that since further excavations might be needed British Waterways would prefer to wait until they were complete or shown not to be needed. By the time of the complaint to me, in August 2005, no repairs had been done.
3. Since the road (which is not one maintained by the Council) was in regular use by people entitled to use it to gain access to premises, it seemed reasonable to expect British Waterways to play their part in keeping it in a reasonable state of repair. I could not see that the flooded sections would pose major concerns about safety which required urgent action. I regarded the approach already taken as reasonable. In all the circumstances I would not expect British Waterways to carry out repairs which could be futile because of other excavations required subsequently. Following the complaint to me British Waterways agreed to do works to the worst affected areas and said that the work had been done in December 2005. I was not inclined to see the delays to that point as amounting to maladministration. However the complainant said the work done was not to the areas which flooded and, at my request, provided recent photographs of the road after rain.
4. It was disappointing that some problems with standing water clearly remained. I was puzzled why the initial survey had not identified at least some of those areas for treatment. However from the pictures, the areas of standing water seemed more likely to be an annoyance to pedestrians than a safety risk to drivers. Many roads have some such areas after rain. British Waterways also expressed surprise that problems remained but said that they were prepared to reassess the situation and see what more needed to be done along the side of the road adjacent to the footway. Even if I had felt the fact that all the worst affected areas had not been dealt with in December was attributable to maladministration (which would be hard to judge), I could not reasonably expect British Waterways to do more at this point than they had already agreed to do.
5. The complainant felt that the closure of the path contravened the Council's unitary development plan, as developments with water frontage should provide a walkway. However the plan only said that with regard to new developments, and the site in question was still awaiting development. He also complained that British Waterways wrongly failed to apply for planning permission for barriers, spikes and anti-climb paint used to maintain the closure of the path. I noted that the complainant accepted that planning permission would have been granted had it been sought. Given that, I saw no need for me to consider the matter further as I could not see that it was the source of any material injustice to him. However I could not give a definitive view on planning matters and advised the complainant of his right to approach the planning authority directly.

6. British Waterways provided evidence that they did discuss with one residents' group the possible establishment of a formal footpath through the site, but eventually rejected the idea on grounds of cost and safety. The complainant was not involved with that and I did not find evidence of any wider consultation about the path. However clearly British Waterways were well aware of the desire of some residents for a proper path, but nevertheless decided against it because of concerns about safety and cost. I was not convinced that any more formal or wider consultations would necessarily have resulted in a different decision.
7. In their response to me, British Waterways added to previous responses about why they saw use of the path as unsafe, without additional – quite expensive – works. It seemed to me that the complainant had had an explanation: clearly he did not agree with it but that in itself was not evidence of maladministration. It was not part of my remit to judge the safety issues involved. I did not find any substantive evidence to support the inference the complainant drew about the motives lying behind the path closure.
8. In sum the complainant (and I doubted he was alone) believed strongly that the path should be re-opened. Unless the path should have been treated as a public footpath (which would be a matter for the Council), the decision on whether to maintain or provide a path was a discretionary one for British Waterways. I had no power simply to consider the merits of the decision, however strongly the complainant disagreed with it. However, if there were any administrative failings in the way the matter was considered, I had not seen evidence that they were so great as have resulted in the decision to close the path when otherwise access would have been made available. I did not uphold the complaints.

Case No 48 – handling of negotiations on mooring agreement and change of mooring type

1. A community group of boaters (the group), wishing to live on their boats in a low-impact, ecologically sustainable way, had discussions with British Waterways from 2002 to 2004 about the possibility of making a special local mooring agreement. Amongst other things they wished to be able to rent long term moorings in various local sites within which they could move around. Although a draft of an agreement of the type they sought was drawn up by British Waterways in late 2003, early in 2004 they were told that British Waterways were not prepared to go ahead as they had decided nationally to have a policy of not making local agreements. Moorings on one site (site B) previously used by some of the group were to be changed from long-term to 48 hour visitor moorings.
2. The group complained that:
 - since they were aware of another similar agreement in use elsewhere and they had been working on their draft agreement for years before the policy decision was made, it was maladministration and unfair for British Waterways not to finalise the agreement with them;
 - that their views and those of local residents had not adequately been taken into account in the decision to change the moorings at site B to visitor moorings.
3. It was not within my remit to decide exactly what policy British Waterways should have on the question of moorings agreements or to take any view as to the merits of what the group proposed. Instead I had to concentrate looking at how British Waterways went about considering the matter. It was not disputed that British Waterways had had quite protracted discussions with the group about an agreement, and pulled back from that at a point when an agreement was very close to being signed. The simple fact that they changed their minds was not in itself evidence of maladministration or unfairness. My focus was on why and how they did that. The exact sequence of events in the decision making process was not entirely clear. From what British Waterways said there appeared to be two main factors influencing the decision. The first was the abandonment (following a meeting with user groups in February 2004) of the idea, being developed at national level, of roving mooring permits. An alternative approach to issues surrounding abuse of continuous cruising rules was then agreed. From the information before me, I had no reason to see any fault in the way issues relating to that factor were handled.



4. However it did not seem to me that that could have been the determining factor in the decision regarding the group. They had been negotiating a local agreement in any event and correspondence showed that local British Waterways staff had intended to go ahead and implement that independently of (and ahead of) any decision on the national policy on continuous cruising. Furthermore, during the course of the complaint British Waterways apologised for not making much clearer earlier that the arrangement could not be supported because of their concerns about an arrangement elsewhere. It seemed then that concerns about that other arrangement must have been the more significant factor.
5. I did not think the apology, already offered, was sufficient to remedy matters. It seemed to me that good administration in this case would have involved liaison between the relevant staff in the two different areas. If concerns were developing about the other agreement, which were so significant as to call into question whether a similar scheme was appropriate here, those should have been passed on to staff negotiating with the group. It appears that any such concerns were either not apparent, not passed on or not acted upon until the point when a draft agreement was close to signature. Having reached such a late stage, after such protracted negotiations, I thought it was wrong of British Waterways, before making a decision, not to explain the position more fully to the group. They deserved the opportunity to discuss whether further amendments could be made to the scheme which might allay British Waterways' concerns. As it was, after a delay, they were simply told that an agreement would not now be made. They were given no chance first to respond to British Waterways' concerns. In the very particular circumstances here, I regarded that as maladministration and upheld the complaint to that extent.
6. Where there is a failure of this in the process of decision making, the correct remedy is usually for the matter to be reconsidered properly: as I made clear at the start it is not for me to make a judgement on the merits of the proposals, nor would it be possible in this case for me to judge what decision would have been made if proper consideration had been given. I **recommended** that British Waterways should:
 - provide the group with a clear account of their current concerns regarding the arrangement elsewhere, which are relevant to the scheme previously proposed for the group;
 - provide them with details of any other considerations which would affect the possibility of implementing the scheme;
 - give the group a reasonable opportunity to respond in writing to those concerns, including an opportunity for a discussion about them and how they might be mitigated;
 - reconsider the question of the scheme at Director level, taking the views of the group into account;
 - provide the group with a full clear written account of the reasons for their ultimate decision.
7. Whilst I could understand the group's preference for continuing to moor long term at site B, the fact that they disagreed with British Waterways' decision to change it to 48 hour moorings was not in itself evidence of maladministration. I did not find other evidence of maladministration and so did not uphold this aspect of the complaint.

Case No 51 – practice on limiting mooring duration and complaint handling

1. An officer of a national waterways organisation sent complaints to the general managers of two different regions of British Waterways. Each complaint was that all the new moorings in the region had been ones with the mooring duration limited to 48 hours, whereas the organisation believed that British Waterways were obliged to provide moorings with a mix of permitted durations. The organisation complained that British Waterways acted maladministratively in:
 - introducing a 48-hour mooring policy without consultation;
 - the way it handled the complaint.
2. I did not see any evidence that there was any shift of actual policy, though I could see that there was a risk that the practice might spread across the country and eventually be regarded by staff

nationwide as official policy. I could understand why the organisation wanted to draw to British Waterways' attention to:

- the way practice was developing;
 - their fear that this had become some sort of unwritten national policy;
 - the need for consultation if there was to be any change in policy of that sort.
3. I felt that the ultimate response to those concerns by British Waterways had been reasonable. They said that a review of moorings in the relevant area was under way and they planned to consult customer groups in the autumn, aiming to assess feedback by the end of October so that changes could be implemented in time for the 2006 main cruising period. They envisaged changing the time limits at some of the less popular moorings and possibly removing restrictions (other than the normal 14 days) at some locations. I did not uphold this aspect of the complaint, but I did look to British Waterways to implement revised mooring durations expeditiously and to take into account views of waterways groups.
4. I upheld in part the complaint about the way matters had been handled. I **recommended** that British Waterways should apologise.

Case No 57 – installation of reduction gearing

1. This complaint related to the decision to replace paddle gears on the Kennet and Avon Canal in the winter of 2004-05, and to install extra reduction gearing. The complaint was that British Waterways acted maladministratively in making the change and in particular that they wrongly used an engineering solution to solve a problem stemming from inadequate maintenance.
2. While I appreciated the argument about past maintenance I was really not in a position to make a judgement about that: neither party was able to present any firm evidence to support their point of view and I could not see that further efforts to investigate the point would be fruitful. Furthermore it was not for me to determine the appropriate level of maintenance required.
3. I had no doubt that British Waterways wished to improve matters for boaters when they planned the changes. However it was clear that there was not extensive testing of the new system and that, when it was installed along the whole canal, its performance (on many gate paddles in particular) did not meet the reasonable expectations of many users or of British Waterways. They had previously attributed that largely to failures in the standard of work: rather than to a poor choice being made about how to improve the ease of use of the paddles. The fact that the number of complaints about the gearing fell significantly after the end of June, when remedial work was underway, might lend support to that view: but it might simply be an indication that people were less likely to complain when they knew action was being taken.
4. Different people may have different views on the relative benefits of increased gearing, so any change of this sort might well have brought some complaints: but, as British Waterways soon recognised, the problems here were far more significant than that. Before I received the complaint they had already accepted that it would have been better to have a more extensive trial: I agreed. To give a fair test for users of the experience of having the reduction gearing on *all* paddles, both sets needed to be changed on the trial sites: so users really could properly assess the cumulative effect of increasing the number of turns at each lock so much. But there was only one site where that was done. There were also some indications that, whilst user groups were consulted before the changes were made, they may not have been properly aware at that point that gate as well as ground paddles were to be changed on all the locks. I was also concerned that, if so many of the problems were attributable to poor standards of work, that was not picked up and remedied earlier before the public were expected to use the paddles. Those concerns did seem to me to be indicative of maladministration. Some, but not all, of them had already been acknowledged by British Waterways before I received the complaint. I upheld the complaint as regards the failings which had not previously been recognised.

5. I was pleased to note that British Waterways were responding to boaters' views, had already made changes to the spindles and were carrying out further tests of alternative options on the gate paddles. I **recommended** that British Waterways assess promptly the initial feedback on the further trials of alternative options. If that led to a conclusion that further widespread changes may be appropriate, I **recommended** that they carry out more extensive trials and consultation on the preferred option/s, learning the lessons from the problems with the 2004-05 changes. Plans for any further substantive work should include arrangements for ensuring work done was of an appropriate standard and carefully checked on completion.

Case No 68 – handling by BWML of request to operate a sailing school from a marina

1. Mr J moored his boat in a Marina operated by British Waterways Marinas Limited (BWML), a wholly owned subsidiary of British Waterways. He complained that they had not considered properly his request for permission to use a berth at the Marina as a base for his sailing school business for two weeks in 2005.
2. There were two different, but interconnected, factors which might influence BWML's decision about whether to agree to Mr J's request. The first was safety and the capacity within the Marina to cope with the presence of sailors undergoing instruction. The second was a commercial consideration, relating to the planned or contracted use and profitability of the Marina. It was not clear to me whether the original decision was taken on safety or commercial grounds. The safety factor was not put forward, in subsequent correspondence with Mr J, as a particularly significant factor – though it did figure in some of BWML's later comments. From what BWML said they felt that safety considerations would not permit more than the existing number of schools within the Marina: though if so, I was not sure why they moved on to consult existing operators. It was not clear to me that they had taken into account the part-time nature both of one of the existing schools and Mr J's proposal. It struck me that if an additional part-time school did not operate simultaneously with the existing part-time school then any risks should not be increased.
3. However the most crucial factor in the decision made about Mr J's request seemed to have been the second commercial one. Mr J felt that BWML's approach is anti-competitive. If he felt that they were acting illegally then he would have a legal remedy and he was free to pursue that. I focussed on whether BWML's actions amounted to maladministration or unfairness.
4. BWML took the view that it would be against the Marina's interests to allow too many competing schools to use it: presumably because of a fear that this might result in none being viable and the loss of that facility and income from the Marina. I could see nothing inherently wrong in that approach, so long as they had a reasonable mechanism for allocating what opportunities they did make available. It appeared that until Mr J complained they had not had any formal process for that. However the recommendation of the Director at the second stage of the Complaints Procedure rightly recognised that need and proposed the development of such a system. But his proposal would not result in opportunities being available to other schools until 2007.
5. It seemed that an informal agreement had been made back in 2003 with at least one of the existing schools that other operators would 'only be permitted subject to demand'. I agreed that it would be wrong to go back on such an agreement without some notice: BWML not only needed to act fairly towards Mr J but also to the existing operators. I could see that to give an existing operator notice some time after September 2005 (when the Director gave his decision) that the agreement made in 2003 would no longer stand in 2006 would be potentially unfair. No doubt an operator would already have made plans for the 2006 season.

6. However I believed that there was maladministration in the way BWML considered Mr J's request. They did not have a suitable mechanism for allocating what opportunities they could make available and did not go about considering the factors influencing their decision in any systematic way. They wrongly allowed an objection from the existing operator to act as a veto, when from their own account of their agreement with him the agreement was that other operators would only be permitted *subject to demand*. But they made no real effort to assess demand. A significant element of this maladministration was recognised by British Waterways when the complaint was considered by the Director under the Complaints Procedure, and more had been acknowledged following my involvement. The Director recommended a broadly suitable remedy regarding the development of a procedure for allocating opportunities: an initial attempt at implementing that recommendation was aborted following my expression of concerns about the process being used. A new improved process was then to be developed. However more was required in the interim.
7. It was really not possible for me to judge what decision BWML would have made on the request in 2005 if they had considered the matter properly. Whilst I noted Mr J's comments about the effects of not being able to use the marina that year he had no absolute right to do that, and would have been wise to make alternative contingency plans. So in my recommendations I focussed on the future. I **recommended** that a new process should be used for handling all requests to operate sailing schools from the Marina from 2007. This should be fair and open. It should demonstrate clearly (amongst other matters) how it would deal with:
- safety aspects;
 - part-time use and numbers of boats involved at any one time;
 - use simply for boarding, or use for training within the marina;
 - the relevance (if any) of demand and its assessment.



(British Waterways and BWML should apply similarly fair and open processes to requests to operate sailing schools in their other marinas.)

8. I also **recommended** that BWML should carefully consider any request from Mr J (or other people) to use the Marina for a sailing school in 2006. In doing so they should consider:
- first whether, taking into account the agreed use by other operators, safety concerns would make it feasible for another part-time school to operate (eg at periods when another school or schools will not be using the Marina for active training, or for boarding only). In considering this they should take into account the points about safety, made by Mr J and included in the full report;
 - if that might be feasible, secondly, whether there is sufficient demand reasonably to justify (within the terms of the previous agreement) the admission of a further school despite any objections from existing operators.

Case No 78 – noise from water cascading over locks

1. Mr K lives close to locks on the Caledonian Canal and complained about the decision to cascade water over the locks and the resulting noise within his home, especially at night. British Waterways explained that the decision had been taken as a safety measure, to prevent current from sluices dragging anyone falling in under the water. Mr K doubted the overall benefit. It was clear that British Waterways had assessed the risks (though their explanation about the timing of the written risk assessment was rather unsatisfactory). At the time of the complaint they were making efforts to assess the additional noise affecting Mr K and liaising with the environmental health department. I could not see any evidence of maladministration which might have resulted in a different decision about whether or not to cascade the water.
2. However environmental health staff were still preparing a report. I made it clear that if they felt that the noise was likely to amount to a statutory nuisance or advised action should be taken to reduce it, I would expect British Waterways to respond positively. I invited Mr K to contact me again if he felt they had not responded properly to what environmental health staff said.

Case No 98 – allocations policy in BWML marina

1. Mr L complained about the policy of a BWML marina to give preference, when allocating vacant residential moorings, to customers purchasing boats from them. He felt that it was unfair and as the moorings were in effect a national asset they should be allocated on a waiting list approach.
2. Whilst I can consider complaints of unfair treatment, the fact that some people are worse off because a particular policy has been adopted does not in itself mean the policy is unfair. I had also to consider other obligations imposed on British Waterways particularly that to act as a body engaged in commercial enterprise. Where moorings were in short supply any commercial marina operator would be likely to have a policy of the sort adopted by BWML. In all the circumstances I did not feel that there were grounds for me to criticise BWML for adopting such a policy. I might have felt there was unfairness if at the same time British Waterways provided no other moorings themselves and were obstructing the development of marinas other than those operated by BWML. However they did operate other moorings and had just produced a guide encouraging development of more private sector marinas. I did not uphold the complaint.

Extract of text of letter on shared ownership

In the last few weeks I have been approached by both recipients of this letter about the setting of licence fees for boats in co-ownership.

The complainant approached me first, initially seeking consent to release more widely the full text of Mr Edell's report on her complaint. I sent her a copy of the summary prepared for publication. She then mentioned concerns about how the report had been quoted and interpreted by British Waterways in the context of current proposals. She re-iterated her request to release the full text.

Shortly after the complainant first approached me, British Waterways wrote asking if I thought the latest proposal (the 'white paper' of 23 November 2005) had dealt adequately with the issues which had concerned Mr Edell.

In a spirit of openness I think that, if I am to respond to either party, I should send a copy of the response to the other. I am therefore sending one response covering the issues both parties have raised. I have no objection to either party releasing the text of this letter, including the annex (see later) – omitting the names of individuals – more widely if they wish.

First I think I must clarify the status of this letter. My predecessor considered a complaint from the complainant and gave his decision in December 2004. His only recommendation was that British Waterways adjusted the charge for the complainant's boat to that appropriate for a private pleasure boat licence and made a refund back to April 2004. As I understand things, British Waterways have complied with that recommendation. So the Waterways Ombudsman's role in respect of that complaint is over.

The issue now is that British Waterways are proposing a new fee structure and the question arises as to whether that would be considered fair. I have no general role in advising on policy. I could only properly give a definitive view on that if I had a complaint, within my jurisdiction, in front of me: at present I have no such complaint. Therefore this letter is not a formal decision or view. Nevertheless having been approached by two interested parties (on 'opposing' sides), on balance I think may be appropriate to say something. However nothing I say here should be read as binding me in the event of any subsequent complaint on the matter.

I am attaching as an annex to this letter a substantial extract of the text of my predecessor's report, which contains all the key text which led up to the conclusion that previously there was maladministration or unfair treatment. The only amendments I have made are to replace the names of individuals, organisations and the boat involved – for reasons of confidentiality. I am making this available in the hope that it may end the more unhelpful aspects of debates about what my predecessor did or did not say or mean. Some of the quotes I have seen in the 'white paper' and elsewhere seem to me to rather oversimplify the basis of my predecessor's decision: which, it seems to me from my reading, was based on a combination of several different strands of reasoning.

In any event, matters have moved on since Mr Edell reported. He referred to previous consultation documents, and policy decisions made following those consultations. Those are no longer relevant now there has been a new consultation in respect of a new proposed policy. So continued debate about exactly what he meant will not necessarily be very helpful.

Furthermore, whilst clearly I will take into account my predecessor's views in cases like this, I am not bound by them and will reach my own view on any complaints which come to me.

Generally it would not be within my remit to comment on policy being formulated, and that could be extremely unhelpful if in any way it prejudiced my ability to investigate subsequent complaints on related matters. However, having been invited to comment by British Waterways and in the particular circumstances here, I think it would be unreasonable if I omitted to mention to them now anything which immediately struck me as certain to result in criticism if later subject to complaint. In those circumstances, to hold back, until after a policy was adopted and I had received a complaint would seem to be in no-one's interests – least of all the interests of boaters. I have therefore looked at the white paper on that basis.

However at present there is nothing which I wish to raise. I must emphasise that this does not mean that I am 'approving' the proposed policy in any way or that I will not uphold complaints relating to a new policy (similar to or different from this one) when it is eventually adopted. I have not considered the matter with the thoroughness which I apply to individual complaints. I am also very conscious that boaters have not yet had the chance to make formal complaints to me (and indeed I would not be able to consider a complaint about a policy which has not yet even been adopted). Boaters may be able to make points which would cause me to feel, during a thorough consideration of the issues, that there was evidence of unfairness or maladministration. If this policy is adopted it will be open to those affected to make a complaint relating to it in the usual way, and I will consider any such complaints on their own merits.

Extract of Waterways Ombudsman's report on Case No 5 of 2004-05

- 5.2.2 BW's 'Review of Craft Licensing – Final Report and Conclusions' said in paragraph 2.1(b) 'Higher fees will continue to be payable for craft *used* [my italics] for business purposes.' I see nothing unfair about that.
- 5.2.3 One of the complainant's main points is that the boat is used only for the private purposes of the owners and not for business purposes: it is true that the boat is licensed in the name of the company, but that is simply done for ease of administration on behalf of the co-owners. BW, on the other hand, seems to justify its requirement of a business licence on the ground that the boat is managed and licensed by a business. I must consider whether their stance in relation to arrangements such as those adopted for the boat constitutes maladministration or unfair treatment.
- 5.2.4 In the light of the quotation in paragraph 5.2.2 above, I consider in principle that it is inequitable for BW to require a business licence for the boat, particularly when no such requirement is applied to co-owners who do not employ a commercial company to manage their boat. The fact that BW formulated their policy in this way constituted maladministration and/or unfair treatment. I explain my reasons for this view in the following paragraphs.
- 5.2.5 First, The boat is not used for business purposes. The boat is used for the private purposes of the co-owners.
- 5.2.6 Secondly, comparisons with the charges relating to other boats are appropriate. In that connection, the following passage in (British Waterways' comments) is particularly relevant:
- "We believe the root of the confusion in this case is due to the fact that in our new licensing structure we now recognise the impracticality of charging the higher fee for informal boat share arrangements. If a group of friends club together and purchase a boat, and nominate one of their members as licence holder, there is no way that British Waterways could know that the boat is in fact shared between several owners. We see no reason why a group like this should pay more than any other Private Pleasure Boat Licence holder. We currently charge more for boats operated by businesses for sound commercial reasons as endorsed by the Framework Document issued by Defra."

- 5.2.7 It is hard to see how it can be fair to charge co-owners in the complainant's position the rate for a business licence, but make no attempt to make the same charge to people who are essentially in the same position as she is except that the management of the boat is presumably carried out by one or more of the co-owners and not contracted out.
- 5.2.8 I do not understand the rationale of the penultimate sentence of the above quotation. It appears to me that all co-owners of boats should in principle be in the same position.
- 5.2.9 The last sentence of the above quotation proposes a different test from that set out in paragraph 5.2.2 above i.e. whether the boat is operated by a business. The exact meaning of this test is far from clear in the present context, but in any event it is not the one laid down by BW's policy.
- 5.2.10 There has been discussion in the correspondence of a comparison with timeshare boats. I have not been given enough information about how such boats are administered to enable me to form a view on this issue.
- 5.2.11 I add for completeness that I have considered whether a higher charge is justified for the boat and boats in a similar position on the ground that they use the system more intensively than boats owned by a single person. The answer on that point is that BW said in paragraph 3.4(a) of its Consultation Update of 1 August 2002 'The broad consensus would seem to be that the basic licence should cover unlimited use...'; and in paragraph 2.1 of its 'Reviews of Craft Licensing – Final Report and Conclusions' that 'Length will therefore remain the main driver of fee differences...'
- 5.2.12 For the reasons given above, I consider that the formulation of BW's policy in relation to co-owners of boats in the same position as the complainant constituted maladministration and/or unfair treatment. I recommend that BW adjust the charge for the boat to that appropriate to a Private Pleasure Boat Licence prospectively and retrospectively to April 2004, making the necessary refund in respect of the period from April 2004 to the present time.

Biographical notes – Hilary Bainbridge, Waterways Ombudsman

After obtaining a degree in mathematics, Hilary went on to train as a social worker and worked for social services and the voluntary sector before spending a major part of her career in Ombudsman work, initially as an investigator for the Local Government Ombudsman's office. She then moved to the Audit Commission, becoming Regional Projects Officer for north-east England looking at value for money in the public sector. Subsequently she spent eight years as a Director of Investigations for the Parliamentary and Health Service Ombudsman, before returning to the Local Government Ombudsman's office to be Deputy Ombudsman in York.

Since 2004 she has carried a portfolio of part-time work. This includes spending two or three days each month as an Area Commissioner for the Mental Health Act Commission. She also does some work for the Parliamentary and Health Service Ombudsman, having worked on a special report on the reform of the NHS Complaints Procedure which was published in March 2005, as well as on some individual cases. But the majority of her work since July 2005 has been as Waterways Ombudsman. She is also a governor of her local further education college.



Hilary Bainbridge.

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 four. 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 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 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

How to contact the Waterways Ombudsman

If you have a complaint about British Waterways you need first to use its own Complaints Procedure. Information about that is available from the website www.britishwaterways.co.uk, or from the External Relations manager Eugene Baston on 01923 201350 or by email to eugene.baston@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





