



ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN COMMITTEE COVERING THE PERIOD 2012-14

The Committee

1. This is the eighth annual report of the Waterways Ombudsman Committee, but the first of the current Waterways Ombudsman Committee, covering the two year period 1 April 2012 to 31 March 2014. Since its initial formation in 2005 the Committee has overseen the operation of the Waterways Ombudsman Scheme and the independence and accessibility of the Waterways Ombudsman.
 2. On 2 July 2012 the Canal & River Trust took over the functions of British Waterways in England and Wales, but not in Scotland. This report therefore covers the period of transition from British Waterways to the Canal & River Trust. The last acts of the previous Waterways Ombudsman Committee were to appoint a new Ombudsman (who took over the role from his predecessor on 1 November 2012) and to issue its annual report for the period from 1 April 2011 to 31 March 2012. The Waterways Ombudsman now considers complaints only in relation to England and Wales. British Waterways' canals in Scotland became the responsibility of Scottish Canals, and complaints about Scottish Waterways are now handled by the Scottish Public Services Ombudsman.
 3. Given the various changes and transitions underway during 2012/13, the decision was taken to hold off preparing an annual report last year, and to produce a two year report for the period to 31 March 2014, capturing the first full year of the Canal & River Trust. These changes and transition also resulted in a hiatus in the meetings of the Ombudsman Committee but a new Committee has been appointed and met for the first time on 16th February when it considered and approved this report. Approved minutes of Committee meetings are available on the Waterways Ombudsman Scheme's website at www.waterways-ombudsman.org.
 4. The main roles of the Committee are:
 - the appointment (or removal from office) of the Ombudsman;
 - keeping the operation of the Scheme under review, both to ensure that it meets its purposes and that it is adequately funded;
 - to receive reports on the method and adequacy of publicising the Scheme; and
 - to publish an annual report.
- (Issues relating to the investigation or determination of complaints are matters for the Ombudsman alone, and the Committee has no part to play in those.)
5. The Committee has six members. Of those, four (including the Chairman) are independent. The remaining two members were appointed by the Canal & River

Trust. Full details of the membership of the Committee are given at the end of this report.

The Scheme

Ombudsman's reports

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

- complaint workload;
- service standards;
- customer satisfaction;
- contacts with stakeholders;
- publicity;
- progress on plans;
- funding of the Scheme.

Operation of the Scheme

7. The Committee remained satisfied that the Scheme was meeting its purposes as set out in the Rules.

Conclusion

8. The Scheme itself has been running smoothly throughout this period of significant change despite the hiatus in the meetings of the Committee during this period. The new Committee is committed to ensuring that the scheme continues to provide a good, fair and timely service for complainants, now that the transition to management of the waterways in England and Wales to the Canal & River Trust has fully settled into place.



Members of the new Ombudsman Committee on 16 February 2015

Chairman

Professor Sir Jeffrey Jowell QC is Director of the Bingham Centre for the Rule of Law and Professor Emeritus of Public Law at University College London. He practises at Blackstone Chambers, was a former member of the Royal Commission for Environmental Pollution and Office of Rail Regulation and is the UK Member on the Council of Europe's Commission for Democracy Through Law ("The Venice Commission").

Other Independent Members

Steve Harriott is the Chief Executive of The Dispute Service which operates tenancy deposit protection schemes across the UK. These schemes all operate under government contracts. In addition to this work it also provides free alternative dispute resolution services in relation to tenancy deposit disputes and deals with c. 15,000 disputes a year. Steve's professional background is in the area of social housing where he has worked as chief executive of a number of housing associations in England. He also serves on the Boards of Chatham Maritime Trust and of Boston Mayflower Housing Association in Lincolnshire. He writes widely on tenancy deposit issues and is keen to see the wider use of alternative dispute resolution to resolve consumer disputes.

Kevin Fitzgerald is currently a special advisor in the Cabinet du Directeur General at the United Nations World Intellectual Property Organisation, Geneva. Previously he was Chief Executive of the UK's copyright agency where he led the setting up of regulation for the copyright industry. He was awarded a CMG in the Queen's Birthday Honours 2013 for services to British economic interests.

Jenny Murley has a BA in Law from Anglia Ruskin University and a Masters in Law from Queen Mary and Westfield College. She was called to the Bar in 1982. She is employed as the Compliance Officer to an FCA regulated fund management company which acts as advisor to two infrastructure funds. Jenny has previously worked for Consumers' Association, the Investment Management Regulatory Organisation (IMRO), and the Insurance Ombudsman Bureau.

Members appointed by the Canal & River Trust

Lynne Berry, OBE is deputy chair of Canal & River Trust.

She is chair of the Commission on the Voluntary Sector and Ageing; SID at Cambridge University Hospitals Foundation Trust; senior fellow at Cass Business School and sits on the FT's NED Advisory Board.

Previous appointments include CEO of WRVS, the General Social Care Council, the Equal Opportunities Commission and the Family Welfare Association, CEO of the Charity Commission. Government appointments include the Office of Civil Society Advisory Board and several Better Regulation Task Forces. Lynne is a board member of the International Women's Forum and co-founder of Women in Public Policy.

She was recently appointed Chair of the new charity formed as a result of the merger of Breakthrough Breast Cancer and Breast Cancer Campaign.

Jackie Lewis graduated in chemistry in 1988 and subsequently worked with ICI for two years as a research chemist before returning to university to study law.

Jackie was called to the Bar in 1992 and then practised as a barrister, primarily in the field of criminal defence before joining the City law firm Clifford Chance in 1995.

After five years at Clifford Chance, she left to work within the in-house legal department of RMC and then joined British Waterways at the beginning of June 2001. At the beginning of 2014, Jackie became General Counsel for Canal & River Trust.

PART 1: REPORT OF THE WATERWAYS OMBUDSMAN FOR 2012-13

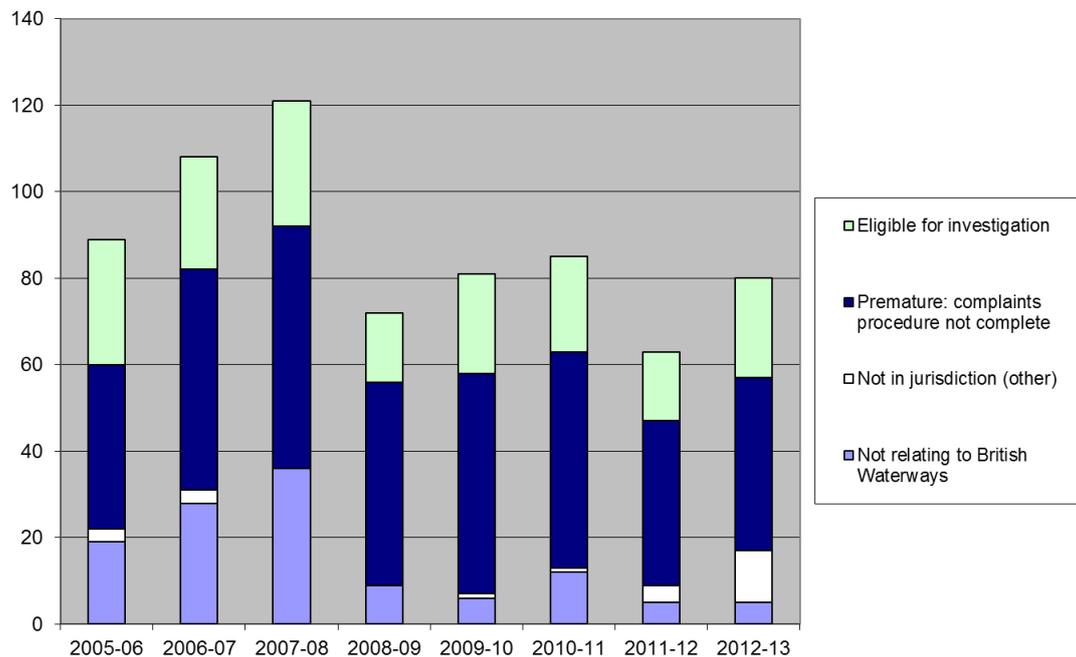
Introduction

1. This is the first part of my first annual report as Waterways Ombudsman, covering the period from 1 April 2012 to 31 March 2013. The previous Ombudsman, Hilary Bainbridge, completed her term of office on 30 September 2012, and I was appointed on 1 November 2012. The year concerned covers the period of transfer of responsibilities for waterways from British Waterways to the Canal & River Trust (in England and Wales) and to Scottish Canals, which took place on 2 July 2012.

Casework - workload

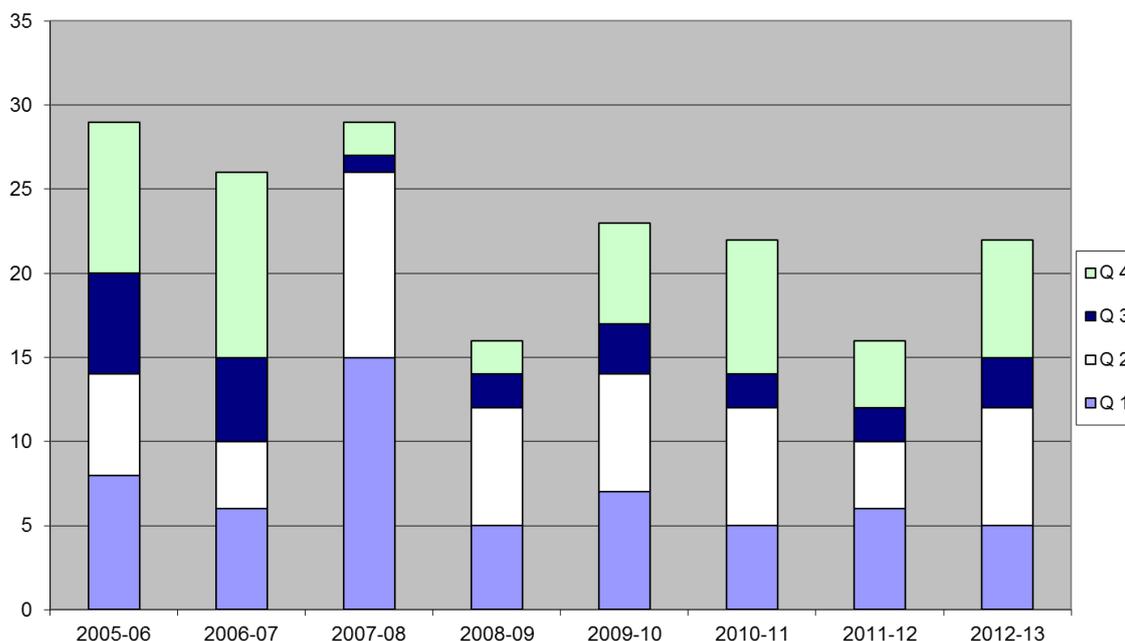
2. The number of enquiries this year has increased from 63 to 80, but when the number of enquiries about issues not relating to British Waterways or the Canal & River Trust is taken into account the numbers have increased from 58 to 75. The number of enquiries in "not in jurisdiction (other)" has increased significantly from four to 12. Of those 12, four were requests for information or guidance, three were resolved by the complainants' own actions, and in two cases I concluded after looking at the complaints that no worthwhile outcome could be achieved. Extracting these, the increase in complaints in jurisdiction is thus smaller, from 54 to 63.

Enquiries work



3. I can only consider complaints put to me which have completed stage 2 of the Canal & River Trust's complaints procedure (or where the procedure has failed). Twenty-two of the enquiries were complaints within my jurisdiction which I was able to accept for consideration, as compared with 16 in 2011/12.

New cases to 2012-13

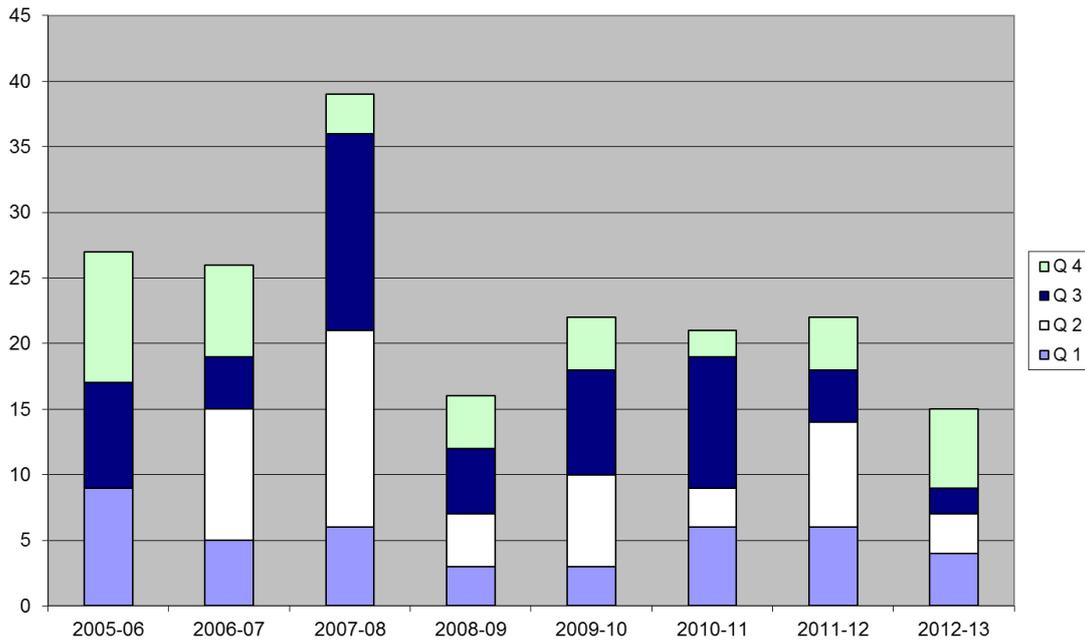


4. The number of complaints entering the Canal & River Trust's complaints system increased very slightly in 2012/13, from 204 to 212, which is not a statistically significant increase. The proportion of those which eventually come to me, and where I have opened an investigation, has risen this year, from 7.8% to 10.4%, representing an increase in new cases opened from 16 to 22. Given that these figures are relatively low it would be difficult to conclude that this is a significant increase, and can probably only be viewed in the context of longer term figures.

5. My predecessor pointed out in her last report that a conversion rate of 7.8% was high in relation to the figure of about 3% in 2005-06. However, it is worth pointing out that the absolute numbers of new cases opened by the Ombudsman have remained relatively stable. Possible explanations are that the Trust, and British Waterways before it, have got very much better at dealing with (or avoiding) complaints before the formal complaints process is invoked, but that the number of complaints which the Trust is unlikely to be able to resolve without recourse to the Ombudsman has remained relatively static.

6. Fifteen investigations were completed in the 2012/13 year, nine by my predecessor and six by me, compared to 22 in 2011/12 and 21 in 2010/11. If I can resolve complaints informally, rather than issuing a more formal report, I generally do so as that usually produces the best outcome in the quickest, most efficient way, and there were two such complaints in 2012/13. Of the remaining 13 completed investigations, 11 were not upheld, and two were upheld in part. The Canal & River Trust agreed to act upon all the recommendations I made in my reports.

Investigations completed quarterly



7. All but three of the completed cases took less than six months to reach a decision. I inherited six cases from my predecessor, which included the three cases which took longer than six months to complete. Two were exceptionally complex cases, involving multiple issues, while the third was difficult to resolve because of the financial sums involved and the lack of clear evidence. The slight delay in the handover of responsibilities from my predecessor to me undoubtedly had an adverse effect on the completion times. Even so, excluding the two most complex cases, the average time to complete cases again improved this year, reducing from 77 to 65 days, but when the two complex cases are included the average completion time was 92 days.

Time to completion	2008-09	2009-10	2010-11	2011-12	2012-13
<3 months	10 (63%)	13 (59%)	15 (71%)	15 (68%)	10 (67%)
3-6 months	4 (25%)	4 (18%)	4 (19%)	6 (27%)	2 (13%)
6-9 months	1 (6%)	2 (9%)	1 (5%)	0	2 (13%)
9-12 months	0	1 (5%)	1 (5%)	0	1 (7%)
>1yr	1 (6%)	2 (9%)	0	1 (5%)	0

8. There were eight ongoing investigations at the end of March 2013. Two were complex cases which I had inherited from my predecessor, while the other six were all cases which I had accepted for investigation during the final quarter of the year.

9. Seven of the 15 completed investigations related to boating issues and, of those, three related to moorings in some way. The nine other complaints included four about overhanging trees or towpath maintenance, two about fishing rights or unauthorised fishing, one about a property leased from the Canal & River Trust, and one about vehicular access along a towpath. Two of the three complaints about moorings related to British Waterways Marinas Limited (BWML – a wholly owned

subsidiary of the Canal & River Trust which operates marinas). Summaries of all completed investigations can be found in Annex B.

Service standards

10. The service standards for the Ombudsman scheme set by the Committee are as follows:

- acknowledgement or response to initial letter, email or telephone call within a week of contact in **90%** of cases;
- decision on whether to investigate within 3 weeks of initial contact in **90%** of cases;
- **70%** of investigations complete within 6 months of acceptance.

11. All the targets were exceeded during 2012-13

- the first standard has been achieved in 96% of cases;
- the second standard has been achieved in 96% of cases;
- the third standard has been achieved in 80% of completed cases.

Contacts with stakeholders

12. During the year I have:

- met with the Chairman and Secretary of the Residential Boat Owner's Association.

This was an opportunity to meet people who represent waterways interests. I shall continue to accept such opportunities.

Issues arising from complaints

Complaints handling

13. As I was in place for only five months of the reporting year I have no real comparisons to draw on. My initial impression is that the Trust has handled the complaints well.

Complaint issues

14. Without conducting a detailed analysis, it is difficult for me to say definitively that the pattern and subject matter of complaints has been quite similar to that in previous recent years, but I have sometimes needed to look at previous cases and my impression is been that there have been no marked differences. As before there has been no single major theme emerging, and continuous cruising, mooring management and charges, and licence fee payment processing have appeared as complaint issues. There have also been several complaints about increases in BWML mooring charges.

Future changes

15. The previous annual report referred to the transfer of Ombudsman arrangements for Scottish Waterways, which meant that complaints about Scottish Canals now go to the Scottish Public Services Ombudsman. Only one of the enquiries during the year related to waterways in Scotland, and in that case British Waterways' internal complaints procedure had not been completed.

16. My predecessor reported that the organisation of new Ombudsman arrangements for England and Wales had not progressed so quickly, but that situation was eventually resolved with my appointment on 1 November 2012, although there was a hiatus of one month after her term of office ceased.

17. As had been agreed, the Canal and River Trust agreed that, rather than setting up a new Ombudsman scheme straight away, they would adopt British Waterways' scheme (with some minor changes) to begin with. As of the end of this reporting period, a new Waterways Ombudsman Committee had not been appointed, though this has since been addressed.

Conclusion

18. As I said in the introduction, this is my first report as Ombudsman. I have benefitted greatly from my predecessor's careful recording, documentation and management of the workload, as well as from her invaluable assistance during my first weeks and months. In the year there has been the very significant event of the transfer of functions from British Waterways to the Canal & River Trust, although this happened before my appointment. Because the change had happened before my appointment I cannot really comment on how or to what extent it has affected the working relationship with the Ombudsman, but it is worth pointing out that my predecessor felt that she had a very good relationship, and in my early months I have had excellent support from Trust staff, who have been very helpful.

19. Inevitably, many of the complaints I have received have been the first examples of such complaints that I have seen. It has been necessary in some, but far from all, of those cases to acquaint myself with detailed waterways background knowledge. Where I have needed further information from the Trust, either to improve my general understanding of the situation or for specific case material, it has almost always been provided promptly.

20. In her final report my predecessor noted that one of the big changes for her during her time as Ombudsman had been the use of computers and the Internet, commenting that in 2005 she had inherited no computerised records from her predecessor, and that the scheme had no website. I have not fundamentally changed the computer recording scheme I inherited, but I have decided to move away from a largely paper-based records scheme and adopt as far as possible a fully electronic case recording system.

21. All information exchange between me and the Trust is now electronic, and where complainants send me hard copies I scan them into my system and securely destroy the hard copies, except for certain information such as large and/or published documents which are difficult to scan, where readability would be significantly reduced. I do use some hard copy documents, but generally only as working papers while I am considering a complaint. My data retention policy means that with the passage of time most of the paperwork I inherited will be securely destroyed and not replaced.

22. In terms of the way people contact me, most complaints arrive by email rather than telephone or letter, but it is clear that these are still regarded by some complainants as important means of contact. Some complainants, albeit a very small number, either do not have, or do not use, Internet access.

23. It has been a very busy and interesting first few months for me, and I look forward to what I am sure will continue to be an interesting time.

A handwritten signature in blue ink that reads "Andrew Walker". The signature is written in a cursive style with a long horizontal stroke at the end.

Andrew Walker
Waterways Ombudsman

Detailed data on enquiries – 2012-13

Group		
A	Not relating to the Canal & River Trust	5
B	Premature: internal complaints procedure not complete	40
C	Not in jurisdiction (other)	12
D	Eligible for investigation	23
	Total	80

Group A

Of these complaints two related to water utilities, while three related to other navigation authorities, of which two related to boats or mooring issues while the other related to the state of a canal.

Group B

This group includes all enquiries made relating to the Canal & River Trust, which might be in my jurisdiction but which had not yet completed the complaints procedure. While my predecessor included enquiries such as requests for information, I have taken a slightly different approach, which is to include those matters which are more obviously complaints and which if the Trust’s complaints procedure had already been completed would be likely to be eligible for investigation. I have encouraged such complainants to use and complete the internal complaints procedure, and to come back to me if they remain dissatisfied.

In the five months between 1 November 2012 and 31 March 2013 I have seen no cases where the complainant has clearly tried, but failed, to pursue their complaint against the Canal & River Trust. A number of enquirers contacted me about complaints but have not shown that they had already attempted to contact the Trust; rather they appear to have found my details and come to me first, perhaps as a first port of call rather than first try pursue their complaints via the Canal & River Trust. I have referred a number of such enquirers to the Trust but have not heard from them again so I do not know whether they decided not to pursue their complaints or whether, having done so, they achieved a satisfactory outcome. One man contacted me, who had evidently been in regular contact with the Trust, but I was satisfied that he was familiar with the complaints process and did not need my assistance or guidance.

Group C

This category includes five enquiries which were requests for assistance or information, which may have been made in connection with a grievance but where I have not specifically been asked to consider it as a complaint. It also includes three cases where the enquirers managed to resolve the situation without going through the Trust’s full complaints process. Of the other cases, in one I was approached by the complainant’s MP, and I wrote to him explaining in detail why I considered that no worthwhile outcome could be achieved. In another, I explained to the complainant that I was declining to consider the complaint on the basis that it

appeared to me that it either raised no substantial issues or the complainant has not suffered injustice involving loss, damage, distress or inconvenience.

Group D

Although 23 of the enquiries received during the year were eligible for investigation, the number of investigations completed was 15. Two of those completed investigations related to enquiries first received in the previous year, while 10 were not completed during the year. The summaries in Annex B relate to the 15 investigations which were completed during the year.

Summaries of decisions on all eligible cases for investigations which were completed during the year

Index of investigated cases

The abbreviations show whether the cases were dealt with by the previous ombudsman, Hilary Bainbridge (HB) or the present ombudsman, Andrew Walker (AW).

Case No 625 – wrongful charging of VAT on licence (HB)

Case No 633 – tree adjacent to home (HB)

Case No 639 – BWML mooring charges and permitted uses of the marina (AW)

Case No 640 – trees adjacent to the property (HB)

Case No 642 – failure to deal properly with claim for cost of repairs for a leased property (AW)

Case No 646 – access to waste disposal facilities (HB)

Case No 655 – BWML mooring charges (AW)

Case No 662 – vegetation management (HB)

Case No 665 – licensing (HB)

Case No 666 – failure to maintain towpath adequately (HB)

Case No 675 – refusal to allow vehicular access along the canal bank (HB)

Case No 676 – briefing of Trustees and refusal to admit a meeting (HB)

Case No 684 – failure to act on action promised re disabled access for fishing (AW)

Case No 695 – refusal of mooring right outside house at a BWML marina (AW)

Case No 696 – unauthorised fishing (AW)



Explanatory note

During the period of this report, on 2 July 2012, the Canal & River Trust took over the functions of British Waterways. While some complaints were submitted before that date, they were not concluded until afterwards. Four complaints (625, 633, 640 and 646) were submitted and concluded before that date, and I have referred in the summaries only to British Waterways.

One complaint (642) was submitted before 2 July 2012 and concluded afterwards, while all the rest were submitted after that date. Although clearly much of the history of some of these complaints relates to British Waterways, for the sake of simplicity I have referred in these complaints only to the Canal & River Trust.

Case No 625 – wrongful charging of VAT on licence (HB)

Mrs A lives on a houseboat. From 1993 British Waterways added VAT to her licence fee and continued, although HMRC rules state that the licence fees on a houseboat are exempt from VAT. Although the rules of the Waterways Ombudsman Scheme stated that the Ombudsman could not consider a complaint going back more than 36 months before the complaint was first made to British Waterways, Mrs A did say that she had been complaining, without result, since at least 2002. British Waterways initially stated that it had paid the VAT to HMRC and could only recover it for the previous four years, but it argued that in any case Mrs A was legally entitled to recover the amount owing for a period of six years.

British Waterways initially offered compensation of £2,500, which Mrs A did not accept. After she provided a copy of a letter sent in 2002, which showed that she had at that time raised the VAT issue, British Waterways made a revised offer of £5,200, which Mrs A accepted.

Case No 633 – tree adjacent to home (HB)

Ms B lives in a house adjacent to a canal. One of the trees on British Waterways' land overhangs Ms B's garden. She complained that the tree restricted the enjoyment of her property and infringed her human rights, and although she did not want it cut down she did want it cut back. She also felt that the tree was dead or dying. In dealing with the complaint British Waterways surveyed the trees and also visited Ms B. It concluded that the tree was not causing any damage or posing a risk to the property, nor was there evidence that the tree was dead or dying.

The Ombudsman did not consider that in the strict legal sense the tree could be regarded as causing a nuisance, nor did she consider that there was evidence that the tree was posing a significant danger. She explained that she did not have the power to overrule a decision by British Waterways not to prune the tree, but pointed out that Ms B was entitled to have any overhanging branches pruned at her own expense. She found no evidence of maladministration or unfairness and did not uphold the complaint.

Case No 639 – mooring charges (AW)

The bulk of this complaint was the same as case number 655 and my decisions for the common issues were almost identical in wording. The summary for the common issues is set out in the summary of case number 655, but there were additional issues in Mr C's complaint, which are set out here.

Mr C has two boats in a BWML marina. He had let one the boats to a friend, and assisted boat-owners in selling their boats, for a fee. Clause 3.1 of the terms and conditions states that a boat-owner shall not use the marina for a commercial purpose. While Mr M said that he had the oral agreement of the marina manager to the letting of his boat, BWML sent him warning emails about compliance with the terms and conditions, which require the boat-owner to seek written consent for such purposes. The situation was resolved without my involvement, but I did not find evidence of maladministration and suggested that in future Mr M formalise any commercial arrangements.

Mr M had sold, and was selling, boats for other boat-owners in the marina on a commission basis. BWML's terms and conditions state that an owner shall not offer a vessel for private sale without its written consent. In that case, the owner must either use BWML's brokerage service or pay a Sale on Berth fee. BWML has an exclusive agreement with a brokerage firm, and I was not aware of any reason why it may not do so. I did not find evidence of maladministration, and did not uphold this part of the complaint.

Case No 640 – trees adjacent to property (HB)

Mr D lives in a property adjacent to a canal. He said that there were trees on British Waterways' land which were overgrown and which were blocking out light, but which it had refused to prune, even though neighbours had told him that it had previously done so. The Ombudsman explained that although British Waterways seemed to accept the trees were on its land, it had concluded that they were healthy and did not intend to prune them. She said that British Waterways was under no obligation to prune the trees even if it had previously done so, adding that Mr D was entitled to do so himself. She found no evidence of maladministration and did not uphold the complaint.

Case No 642 – failure to deal properly with claim for cost of repairs for a leased property (AW)

Organisation E is a yacht club which leases a property from the Trust. In 2006 the Trust replaced the roof of the property. On top of the building is a clock tower which for historic reasons is owned by the local authority and not the Trust. In subsequent months there were two leaks, which damaged the club's property. In respect of the first leak, the Trust made a payment of £1,800, but which it said was on a without prejudice basis and without admission of liability. A contractor for the Trust had concluded after an inspection that the source of the leak was the clock tower, and advised the club to seek compensation from the local authority. However, the authority did not admit liability, nor did the club's own insurers.

I concluded that it was not possible to reach a firm conclusion on what caused the leak or how responsibility should be apportioned, and felt that the most likely chance of resolution lay in a mediated settlement. The club stated that the cost of the damage was £6,000, but it accepted in full and final settlement an offer from the Trust of £3,000 on a without prejudice basis and with no admission of liability.

Case No 646 – access to waste disposal facilities (HB)

Mr F moors his boat in a private marina which has no waste disposal facilities. After boat trips he had been taking the toilet cassette in his car to a British Waterways

marina for emptying, but one day found that it had then stopped allowing access to the facilities by road. Although British Waterways understood Mr F's predicament, and accepted that he was a genuine boat customer, it explained that provision of the facilities, which were expensive to maintain, had been abused by others, and it had taken the decision to prevent continued access by road, although it continued to make the services available to people arriving by boat. The Ombudsman accepted that Mr F felt frustrated, but explained that possession of a licence did not provide an entitlement to such services, adding that he did not moor at a British Waterways site. The Ombudsman concluded that there was no evidence of maladministration, and she did not uphold the complaint.

Case No 655 – BWML mooring charges (AW)

Moorers at a marina in the London area owned and operated by BWML complained about the new pricing structure for residential moorings and widebeam boats.

BWML had served notice of its intention to apply a widebeam surcharge for boats wider than 3m, and also to introduce a higher rate for boats used for a residential, rather than leisure, purpose. In respect of the application of the widebeam surcharge it explained that the ability to do so was provided for within its terms and conditions, but that it had not previously applied it. In respect of the new residential rate it said that it had been challenged by some local authorities about customers residing at its marinas. It wished to provide residential moorings for those who wanted them, and to avoid being prosecuted for breach of planning law.

BWML's terms and conditions lacked clarity on the space taken up by a boat, stating that it reserved the right to charge for the number of berths used. It was clear that in this marina few or no boats took up more than one berth. The terms and conditions also gave BWML the right to levy between 30% and 100% surcharge for "inland craft" wider than 3m. I challenged the Trust on the definition of a berth, but it argued that its definition was based on water area occupied, and that the pontoon layout was adjustable and its configuration could be changed. While it might seem a difficult task to do so, I accepted that it was possible.

Even if there was a lack of clarity about the definition of a berth or the water area taken up by a boat, and which could be successfully challenged, the Trust would be free to amend its terms and conditions to introduce a more rigorous definition, and then apply a widebeam surcharge. In respect of the Trust's right to apply a widebeam surcharge, I did not uphold the complaint.

I did recommend that BWML should as a matter of urgency consider revising the definitions in its terms and conditions relating to whether a marina was coastal/non-coastal or inland/non-inland, and also the definition of a berth.

On the issue of the introduction of residential moorings, BWML's terms and conditions stated that the owner shall not live permanently on board the vessel without the prior written permission of BWML. Some boat-owners do live on their boats, and stated that it was with the permission of the Trust, and furthermore that they had paid a £500 annual premium for the right to do so. I could not consider whether this was a fair price, but it seemed reasonable for boat-owners to conclude that payment of the premiums entitled them to live aboard their boats.

Although I had little doubt that BWML was aware that moorers were residing on their boats, I accepted that this did not prevent it from later introducing a full residential product at its own rate. In respect of BWML's right to introduce a residential product and to charge a higher rate, I did not uphold the complaint.

Many of the moorers were on three year fixed price leisure mooring contracts. BWML was converting 50% of the moorings to full residential status. In setting a new residential mooring rate, it set a deadline for those wishing to convert to a residential mooring, after which it could not guarantee that they would be able to have one.

Some of the three year contracts were not due to expire until after the deadline for converting to a full residential mooring, and the Trust would have required those moorers to terminate their three year contracts before their natural end date. I concluded that a unilateral decision to terminate a contract in this was likely to be unfair, but the Trust accepted that such contract-holders could remain on their three year contracts, at the prices agreed at the start of those contracts, until their original end-dates.

The moorers considered that in applying higher charges for both widebeam and residential purposes, BWML was breaching competition law by abusing a dominant position in the marketplace. I explained that as an Ombudsman, and not a market regulator, I could not consider such issues, nor could I take a view on whether prices were fair or reasonable.

Case No 662 – vegetation management (HB)

Mr G lives in a property adjacent to a canal. He complained about what he said was the poor record of the Trust over a number of years in managing the vegetation on the land bordering his property. He explained that the Trust used a strimmer to clear the ground, rather than a mower, which meant that cuttings were not collected and furthermore were spread onto his own land, causing weeds to spread. He added that there was also weed infestation from under the fence between his property and the Trust's, as well as an overhanging hawthorn hedge, which together led to a loss of amenity to that part of his garden. There was also a loss of amenity in Mr G's front garden because of pine needle drop from some very large trees overhanging his property.

The Trust did accept that management of part of the area was sub-standard, and would ask for action to be taken, but it generally considered the maintenance to be adequate. The Ombudsman explained that the Trust had a basic right to manage its own land as it saw fit. She added that if the land had been so badly managed as to cause a statutory nuisance she might be able to do something, but she did not consider that this was the case, and did not uphold the complaint.

Case No 665 – licence renewal prompt payment discount (HB)

Mr and Mrs H said that they had not received the renewal notice for their boat licence, which the Trust said was generated automatically on 16 March 2012. They did not renew the licence by the due date of 1 April, and lost the entitlement to the prompt payment discount. Once they became aware that the renewal date had passed, they contacted the Trust on 3 May about the lack of a renewal notice, and asked that they be allowed to benefit from the prompt payment discount, but the Trust refused. The Trust explained that renewals were issued to assist customers in renewing their licences, but that it remained the customers' responsibility to manage

their licences. The Trust referred to its terms and conditions, which state that its rules apply whether or not it had sent a reminder.

Although the complainants stated that the renewal date was in fact 1 May and not 1 April, the Ombudsman noted that they had not enquired about renewal before 1 May, and were not entitled to the prompt payment discount. The Ombudsman stressed that it was the owner's responsibility to ensure that the boat was licensed. She concluded that there was no evidence that the inability of the complainants to renew their licence in sufficient time to obtain the prompt payment discount arose from any maladministration or unfair treatment by the Trust, and did not uphold the complaint.

Case No 666 – failure to maintain towpath adequately (HB)

Mr J's complaint was about the state of a section of the towpath of the Rochdale Canal. In essence, he complained that the problem with the towpath was beyond a temporary solution, that it was a busy thoroughfare for local residents, that the blocking of the towpath by safety barriers meant that people were forced onto the grass, creating a muddy path over adjacent land, that the failure of the Trust to take action had resulted in the wash wall collapsing into the canal, and that the condition of the towpath had a detrimental effect on the residents of the local estate.

The Trust accepted that the towpath was not in an acceptable state, but stressed that the restoration of the canal by volunteers around the year 2000 was, with hindsight, done at the expense of a stable edge to the towpath, that the situation had been exacerbated by the wash from passing boats, and that this had resulted in the towpath at one point collapsing. The Trust explained that the towpath was beyond a quick repair, but that it had put in place a temporary solution for a safe towpath pending a long term project to reinstate the whole towpath. The Trust said that a longer term temporary repair was planned, but that although a more permanent repair was planned it had limited funds and had to prioritise its works.

The Trust recognised that the towpath was well-used by local residents. It upheld a number of the points of Mr J's complaint, and apologised for the inconvenience caused both to him and to other users of the towpath, but concluded that with limited funds it was unable to effect a permanent repair more quickly.

The Ombudsman stated that the Trust had limited funds and that she could not insist that the Trust give priority to a large scale permanent repair, particularly in light of other repairs elsewhere in the country which may be at least as important or pose greater risks to public health and safety. She concluded that as long as the Trust took action to ensure that the area was safe, and enabled access to a useful part of the towpath, she could not insist that it do more, and she did not uphold the complaint.

Case No 675 – refusal to allow vehicular access along the canal bank (HB)

Mr K lives in a property near the Gloucester and Sharpness Canal. Access to the property, and a number of others, is by a canal bridge. When he moved into the property the bridge was in the process of being converted from manual to electric operation, during which time he and other residents accessed their properties via a 300m stretch of the towpath, he said with no problem. On one occasion in May 2012 the bridge was out of operation for what he said was about two hours, but that by that time vehicular access to the towpath had been barred by a locked gate. Mr J

said that at the time of the incident there were two people, one on either side of the bridge, who had medical conditions, but that the Trust had not addressed their situations. In his view access to the towpath should be granted to vehicles, as it had in the past.

The Trust said that its service standards required it to respond to an "emergency" within two hours, but that the bridge, which had failed at 12:25, was once again operational at 14:40 on the same day. The Trust explained that it had a well-established protocol with the emergency services whereby they would let it know if the bridge needed to be made available. It said that vehicular access to the towpath had been closed because of safety risks, particularly given that the adjacent section of the canal was deep. The Trust said that the bridge did not have a history of regular breakdowns, but acknowledged that it was inconvenient when the bridge failed, and did not agree that vehicular access to the towpath should be reinstated.

The Ombudsman noted that Mr J did not have a formal right of access to the towpath, and did not accept that he should have been consulted before the gate was locked. She did not think that there was any particular risk that the bridge would be maintained less well. She stressed that it was for the Trust to weigh up the risk of vehicles using the towpath, noting that there had been incidents when vehicles had fallen into canals from towpaths. In respect of the need for anybody to gain access to medication, she took the view that in case of an emergency, access could be achieved on foot, or if necessary the emergency could take appropriate steps to gain access by one means or another. She understood why the Trust had stopped vehicular access to the towpath, and did not uphold the complaint.

Case No 676 – briefing of Trustees and refusal of admittance to a meeting (HB)

A group of people complained about two issues, which were (a) the content of paragraphs 2.1 to 2.3 of the Trustees' briefing document TT06, about the Trustees' meeting on 22 September 2011, in relation to "continuous cruisers" and (b) to the refusal of the Trust to admit them to the Trustees' meeting on 22 September when the issue of continuous cruisers would be discussed.

In response to the complaint, the Trust disagreed that the term "continuous moorer" was pejorative, derogatory or inaccurate, and did not accept that anything should be withdrawn or rewritten. In respect of the refusal to admit the complainants to the meeting, the Trust stated that it was for the Trustees to decide how to conduct their meetings and who to invite. It added that the views of the complainants were very well known to the Trustees and that they had decided not to invite them. The Trust went on to explain that it sought a consensus wherever it could but on occasion it was not possible.

Among their points the complainants argued that the Trust had failed to deal with the majority of the issues they had raised, that it was a gross assumption that the Trustees already knew their views, that in their absence they would not be able to ensure that the debate was balanced rather than prejudiced, and that it was entirely unacceptable that any organisation should refer to any group of people in derogatory terms.

Having read the briefing document the Ombudsman said that it did not seem to her that the term "continuous moorer" was being used to refer to all boats without a

home mooring, but only to such boats which the Trust believed were not complying with the continuous cruising guidelines. Even then, she noted that since many would not be mooring continuously, the term was arguably not entirely accurate, but could see why the Trust would need a shorter term to refer to such boats. She did not consider the term to be so inaccurate as to make its use unreasonable, nor did she consider its use as being derogatory, and she did not uphold that element of the complaint.

On the issue of the refusal of the Trustees to admit access to their meeting, the Ombudsman was not aware of any reason why they were under any obligation to do so, any more than the complainants would be obliged to allow the Trustees to attend any meeting they might have. It also seemed to her that the complainants had put forward their views by other means, but that if they wanted to submit any further views they did so in writing straight away. She said that she had no basis for concluding that the refusal of the Trustees to admit access to the meeting amounted to maladministration or unfairness, and did not uphold that element of the complaint.

On the complainants' point that the Trust had not responded in detail to the all the issues of their complaint, she noted that many were more in the form of statements rather than detailed points of complaint.

Case No 684 – failure to act on action promised re disabled access for fishing (AW)

Mr L is a disabled angler. He said that since the Trust had made over the fishing rights at a marina to the marina's boat club, he and others had been prevented from enjoying fishing there.

The Trust had assigned the fishing rights to the boat club for a period of five years. It understood that the boat club was less interested in fishing than in preventing others from doing so because of historic problems with irresponsible and illegal angling. Given that it had insufficient resources to exercise control over the fishing it felt that it had been correct in assigning the rights to the boat club. It accepted that the situation was far from ideal, and while it had tried to resolve the problem it had no powers to require the boat club to allow Mr L to fish at his preferred location.

Mr L was able to fish from a different location at the marina, but this was not acceptable to him. I did speak to the Trust to see whether there may be scope for a solution, but it was clear that while the boat club retained the fishing rights there was not. The Trust could not require the boat club to allow Mr L to continue fishing from his favoured location, and as I had no jurisdiction over the boat club there was nothing that I could do.

Case No 695 – refusal of mooring right outside house at a BWML marina (AW)

Mr M lives in a property, which had previously been owned by his parents, adjacent to a BWML marina, and maintained that an easement in the deeds to his property gave him the right to moor a boat there. He complained that the Trust had refused to allow him to moor a boat, and had continually refused to set out its reasoning why he may not do so. He also complained that the Trust had tried to force him to deal only via a solicitor, and had delayed dealing with his complaint.

I first considered declining to consider the complaint on the basis that it was best dealt with by the courts or another body, but decided to accept it with the proviso that I may not be able to obtain a conclusive outcome. The details of the case were very intricate, but in essence Mr M's right to moor a boat outside his property depended on his being able to prove that such a right, which appeared at one time may have existed, was transferred from a previous landlord to a successive landlord. I relied on a careful assessment by solicitors acting for the Trust, who concluded that even if such a right was validly granted it was not included in the transfer of the title to Mr M's parents. I found no evidence that such a right or easement definitely did exist, and I did not uphold the principal part of the complaint. In respect of any delays by the Trust in dealing with the complaint, I concluded that in view of the detailed nature of the complaint the delay did not seem unreasonable.

Case No 696 – unauthorised fishing (AW)

Mr N's house and garden back onto a towpath at a wharf in a town. He complained about anti-social behaviour and ignoring of the fishing ban by youths, particularly in school holidays. Although the Trust said that it did not have the resources to deal with such situations where there was public access, Mr N's view was that that it could not ignore the Government's anti-social behaviour legislation, and regarded the Trust's approach as complacent. The Trust had offered to work with the police and local authority, and to examine whether there was any scope for the local angling club to take over the fishing rights in the wharf. I did not find evidence of maladministration, but in to try to achieve a satisfactory outcome for Mr N I recommended that the Trust carry out the actions it had offered to do.

PART TWO: REPORT OF THE WATERWAYS OMBUDSMAN FOR 2013-14

Introduction

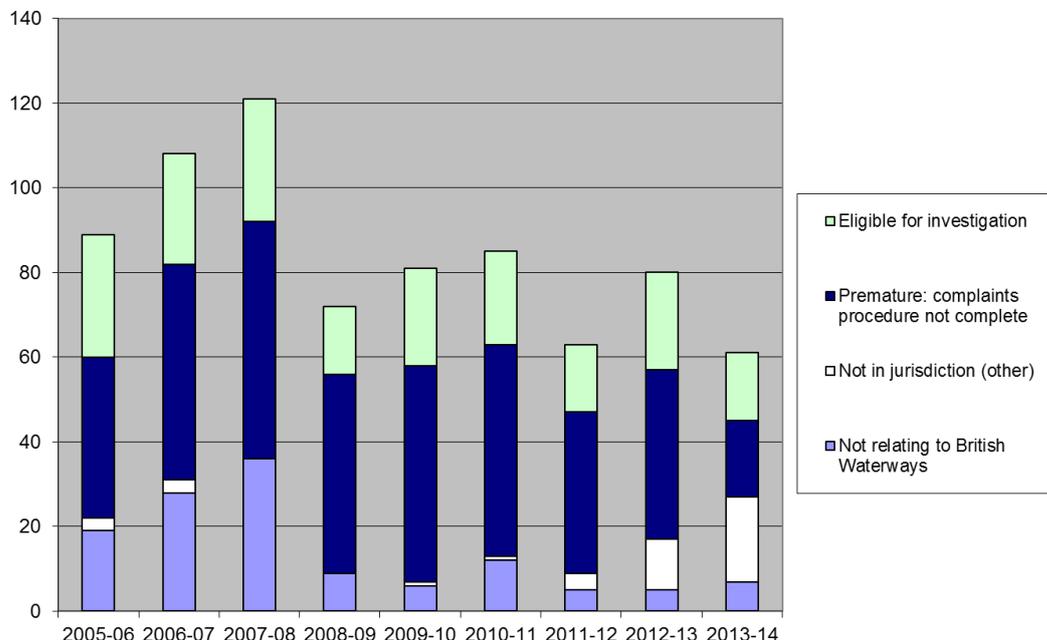
1. This is the second part of my first annual report as Waterways Ombudsman. It covers the period from 1 April 2013 to 31 March 2014.

Casework - workload

2. The number of enquiries this year has dropped from 80 to 61 (it had increased in the previous year from 63 to 80), but when the number of enquiries about issues not relating to the Canal & River Trust is taken into account the numbers have decreased from 75 to 54. The number of enquiries in "not in jurisdiction (other)" has again increased significantly, from 12 to 20, so that the change in enquiries in my jurisdiction is more marked still, from 63 to 34.

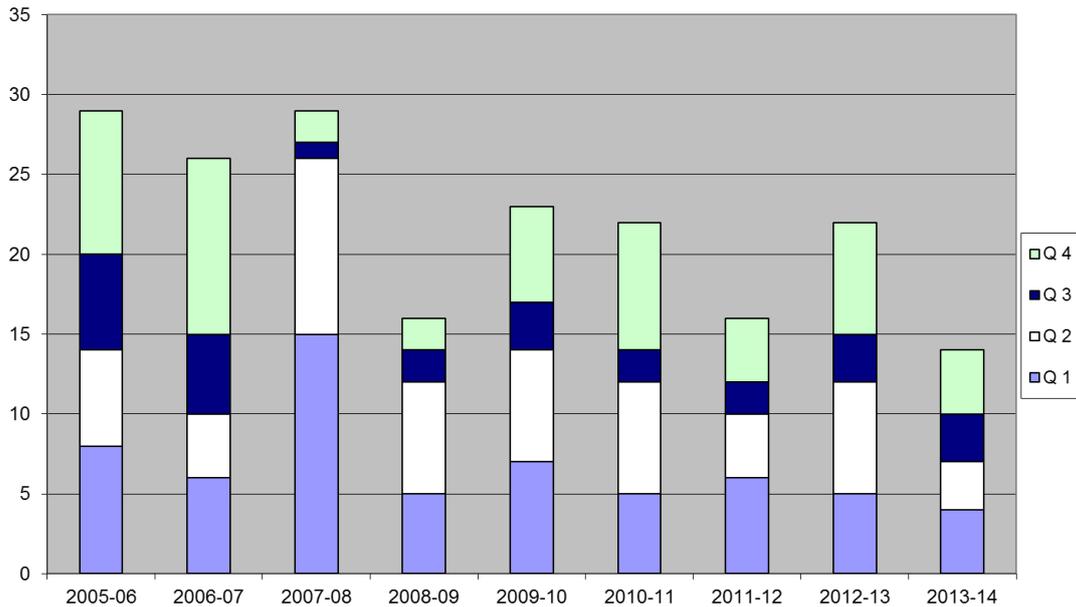
3. Of those 20, ten were for various reasons outside my terms of reference, for example because they were about commercial arrangements or policies. In two cases I was copied on emails only and received no specific request for action. In a further two cases the complainant did not pursue the request even after I had acknowledged it. Another enquiry was a Freedom of Information request, but I am not a public authority, and yet another was a request about another complaint, which I declined on data protection grounds. Three, where the complainant had not completed the Trust's internal complaints process, were resolved after I had made an informal request to the Trust to look at the matter.

Enquiries work



4. I can only consider complaints put to me which had completed stage 2 of British Waterways' complaints procedure (or where the procedure has failed). Fourteen of the enquiries were complaints within my jurisdiction which I was able to accept for consideration, as compared with 22 last year.

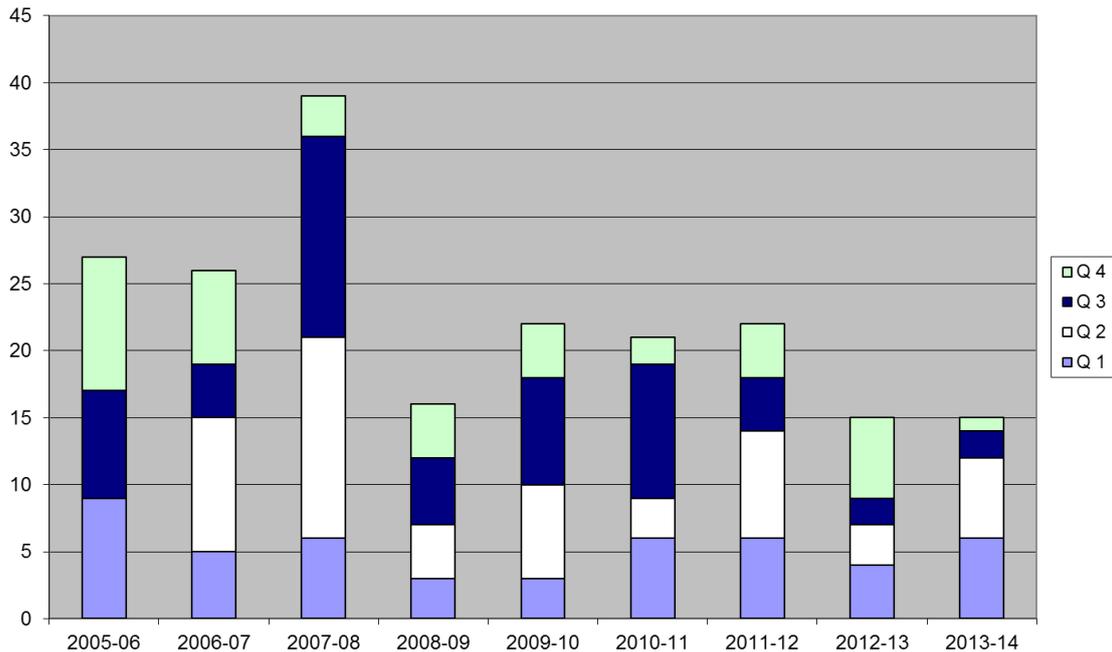
New cases to 2013-14



5. The number of complaints entering the Canal & River Trust's complaints system has increased again this year, from 212 to 232. In the previous year it increased slightly his year, from 204 to 212, which I said was not statistically significant. Even though the increase is greater, it is still difficult to conclude that it is a significant increase. The proportion of those which eventually come to me, and where I have opened an investigation, has fallen this year, from 10.4 to 6.0%, representing a decrease in new cases opened from 22 to 14. I said in the first part of my report that the figures were relatively low and that any trends could really only be viewed in the context of longer term figures. The chart above shows a falling trend in new cases opened since 2005-06, but there is no discernible trend since 2008-09.

6. I completed 15 investigations in the year, which was the same as the year before. In agreement with the complainant I closed one other investigation because it replicated issues on a separate complaint about the same situation, and in the case of another investigation the complainant withdrew the complaint after I had issued the draft report but before I issued the final report. Of the 15 investigations I completed, 10 were not upheld, and the other five were upheld in part. The Canal & River Trust agreed to act upon all the recommendations I made in my reports.

Investigations completed quarterly



7. All but two of the completed cases took less than six months to reach a decision. One of them was the only outstanding case I had inherited from my predecessor, which was a complex complaint. The other was a complex complaint which was one of a number of complaints by the same person and which raised detailed issues stretching back over a number of years. Excluding the two complex cases, the average time to complete cases again was slightly higher than last year, increasing from 65 to 71 days, but when the two complex cases are included the average completion time was 91 days, as compared with 92 days last year for all cases.

Time to completion	2009-10	2010-11	2011-12	2012-13	2013-14
<3 months	13 (59%)	15 (71%)	15 (68%)	10 (67%)	10 (67%)
3-6 months	4 (18%)	4 (19%)	6 (27%)	2 (13%)	3 (20%)
6-9 months	2 (9%)	1 (5%)	0	2 (13%)	2 (13%)
9-12 months	1 (5%)	1 (5%)	0	1 (7%)	0
>1yr	2 (9%)	0	1 (5%)	0	0

8. There were six ongoing investigations at the end of March 2014, the oldest of which was just over four months old.

9. Ten of the 14 completed investigations related to boating issues and, of those, five related to moorings in some way and three to the continuous cruising requirements. Of the four other complaints, two related to marina facilities, one was a complaint about boaters, and the other was about rubbish clearance from a river.

Service standards

10. The service standards for the Ombudsman scheme set by the Committee are as follows:

- acknowledgement or response to initial letter, email or telephone call within a week of contact in **90%** of cases;
- decision on whether to investigate within 3 weeks of initial contact in **90%** of cases;
- **70%** of investigations complete within 6 months of acceptance.

11. Two of the three targets were exceeded during 2012-13:

- the first standard has been achieved in 95% of cases;
- the second standard has been achieved in 86% of cases (there were two cases outside);
- the third standard has been achieved in 87% of completed cases.

Contacts with stakeholders

12. During the year I have:

- attended the AGM of the Residential Boat Owner's Association;
- attended the Ombudsman Association biennial conference.

These were opportunities to meet people who represent waterways and Ombudsman interests. I shall continue to accept such opportunities.

Issues arising from complaints

Complaints handling

13. I am pleased to note that there has been a very significant drop, both in absolute numbers and as a proportion of all enquiries, in the volume of enquiries I have received where the complainant has not completed the Trust's internal complaints procedure. Even allowing for possible slight differences in the way I have categorised enquiries as compared with my predecessor, the number of such enquiries is at an all-time low.

14. I have seen a very small number of enquiries where the complainant has made some attempt to complain, but seems not to have made their request sufficiently clear. One or two have thought that I was either the proper place to bring a complaint, or have asked me to deal with a complaint without realising that I am the final, not the first, stage in the complaints process. Although I inform enquirers about the Trust's complaints process they rarely come back to me. In such cases I can only conclude either that they have followed, and been content with, the outcome of the complaints process, or have not pursued their complaints further.

15. I have seen three cases in the year where landowners or farmers have had problems with leakage from canals and where they had tried to get the Trust to consider and manage their problems but with limited success either in getting the problems dealt with or being directed to the internal complaints process.

Complaint issues

16. The number of enquiries has fallen by just under a quarter compared to last year. As in previous years there has been a wide variety of complaint issues but also as in previous years there were very few common themes emerging. Although it is sometimes difficult to define complaint categories, a rough analysis reveals around 20 or so separate categories, although in a substantial number of there was only one complaint. In one sense this is encouraging because it shows that there are no areas

causing particular concern, and the reduction in the total number of enquiries suggests that there are fewer causes of complaint or that the Trust is handling complaints more efficiently, or indeed both.

17. Of the 54 enquiries relating to the Trust (rather than for example to other waterway authorities) five related in some way to continuous cruising, including the Trust's statements and policies. As I noted above, there were three complaints about leakage from canals onto neighbouring land. I had a number of complaints about the attitude or behaviour of Trust staff, but it was not always clear to what extent the boaters themselves may have contributed to the difficulties. I received a number of complaints about mooring and licence fees, including problems with licence renewals and licence refund policies.

18. I received three complaints about nuisance caused by boaters either to other boaters or to people living nearby. I realise that the Trust has difficulty dealing with such complaints, partly because of the lack of resources to respond to such problems as they arise. I have again seen complaints about the maintenance of canals, or canalside vegetation.

Future changes

19. During 2014-15 I intend to review the appropriateness and fitness for purpose of my website. My initial view is that while it still provides a useful function there is significant scope for improvement, for example to improve the information and links as well as to ensure that it is compatible with modern devices such as mobile phones and tablet computers.

Conclusion

20. This has been my first full year as the Waterways Ombudsman, but it has been possible for me to make a comparison between with the previous year. The number of investigations completed has been similar to last year, although the proportion related more or less directly to boating issues has increased.

21. The number of enquiries has dropped significantly, but the number of enquiries eligible for investigation has been similar. What has changed is the number of premature complaints, where the complainant has not completed the Trust's internal complaints process, and this number has dropped by over 50%. On the other hand, the number of enquiries which are outside my jurisdiction or which do not fall into any other category has risen again, to around one third of the enquiries I have received, but there is no clear pattern or trend in these enquiries.

22. In the first part of my report relating to 2012-13, I said that I had decided to move away from a paper-based records scheme and adopt as far as possible a fully electronic case recording system. I have followed this policy throughout 2013/14, and as most hard copy documentation has become out of time I have securely destroyed it.

Andrew Walker
[Waterways Ombudsman](#)

Detailed data on enquiries – 2013-14

Group		
A	Not relating to the Canal & River Trust	7
B	Premature: internal complaints procedure not complete	18
C	Not in jurisdiction (other)	20
D	Eligible for investigation	16
	Total	61

Group A

Of these complaints three related to Environment Agency Waterways and one to the Bridgewater Canal. One was about a water utility, one about a fishing club, and the other related to an event which, while centred on a Canal & River Trust waterway, was arranged by a local authority.

Group B

This group includes all enquiries made relating to the Canal & River Trust, which might be in my jurisdiction but which had not yet completed the complaints procedure. I have included those matters which are more obviously complaints rather than general enquiries and which if the Trust’s complaints procedure had already been completed would be likely to be eligible for investigation. I have encouraged such complainants to use and complete the internal complaints procedure, and to come back to me if they remain dissatisfied.

Case example

1. A farmer who had problems with canal water leaking onto his land had tried to complain to the Trust. He had been told that his complaint would be escalated via the internal complaints process, but nothing happened. After he had brought his complaint to me I asked the Trust to look at it, and it seemed that the failure of the department concerned to escalate the complaint internally may well have been a genuine oversight. The Trust did then deal with the complaint, although it was later referred back to me and I opened an investigation.

Group C

This group includes ten cases which in my view were clearly outside my rules, for example because they were about commercial arrangements or policies. In a number of the other cases the issues are more likely to have been within my rules, but where the complainant did not appear to have tried to use the Trust’s internal complaints process or where I was only being copied in on an email.

Group D

Although 16 of the enquiries received during the year were eligible for investigation, the number of investigations completed was 15. Seven of those completed investigations related to enquiries first received in the previous year, while six were

not completed during the year. The summaries in Annex B relate to the 15 investigations which were completed during the year.

Summaries of decisions on all eligible cases for investigations which were completed during the year

Index of investigated cases

Case No 670 – refusal of a mooring

Case No 679 – the Trust’s interests in an organisation representing commercial boat hire companies, and Trust staff involvement in the organisation

Case No 687 – renewal of boat licence

Case No 700 – assistance to a boater following a canal breach

Case No 702 – trading from moorings on the Macclesfield Canal

Case No 709 – the Trust’s seizure of a boat

Case No 710 – rubbish in the River Soar at Thurmaston

Case No 713 – poor customer service from the Trust following an accident

Case No 719 – smoke from boats moored outside apartment

Case No 722 – Trust misrepresentation of a boaters’ organisation

Case No 724 – car parking permits at a marina

Case No 738 – Mile End Floating Market July and August 2012

Case No 742 – marina sanitary facilities

Case No 745 – loss of prompt payment discount

Case No 762 – Mile End Floating Market July and August 2012



Explanatory note

On 2 July 2012, the Canal & River Trust took over the functions of British Waterways. While the events in some of the complaints relate to British Waterways, for the sake of simplicity I have referred in these complaints only to the Canal & River Trust.

Case No 670 – refusal of a mooring

Mr A bought a business in a town centre, and wanted a permanent mooring a few yards away on the adjacent canal. He said that he was given conflicting information about whether or not the mooring was included as part of the building lease, but that in any case he signed the building lease in February 2011 on the basis of his understanding that he would be able to have the mooring.

It was clear from the evidence that Mr A was provided with conflicting information; indeed even during the Trust's complaints process it initially supported the decision not to grant a mooring, then reversed the decision only to reverse it again. It was clear that there was not universal agreement within the Trust about whether Mr A should be able to have the mooring. Mr A argued that although there may have been problems with the mooring and the water depth, he regarded it as satisfactory and said that the Trust had permitted such moorings in other locations. The situation was further complicated by the fact that the mooring had been used by a Trust boat, and also that there appeared to be strong and opposing local interest in Mr A having the mooring. At best, therefore, there was uncertainty when Mr A signed the lease that he would be able to have the mooring, and the Trust eventually decided on practical and policy grounds not to allow him to have the mooring.

I concluded that the Trust had failed to deal adequately with the situation, in particular that it had twice changed its mind during the complaints process and had previously provided conflicting information. However, what was clear was that at the time Mr A signed the building lease there was no guarantee that he would get the mooring, and indeed over two months before he did so he was told that he would not be able to have it.

I did not consider that the Trust should allow Mr A to have the mooring, but I did conclude that there had been maladministration in the way that it had dealt both with the issue of the mooring and the handling of the complaint. I therefore upheld the complaint in part, and recommended that the Trust make a further apology to Mr A and make a compensation payment of £150.

Case No 679 – the Trust's interests in an organisation representing commercial boat hire companies, and Trust staff involvement in the organisation

Mr B, on behalf of an organisation representing boaters without home moorings (BWHM, also known as continuous cruisers), complained that the Trust's interests in, and involvement with, the organisation representing boat hire companies amounted to maladministration and led to potential injustice to BWHM. The approach I adopted was to consider whether there had been any detriment, and if so whether this was the result of the alleged maladministration.

Mr B argued, among other matters, that the interests amounted to conflicts of interest, that they led to benefits to the Trust in terms of indirect revenue and

political influence, and that the Trust had given preference to hire boat companies over and above other boaters.

In terms of detriment and injustice, Mr B said that targeted action by the Trust against BWHM was disproportionate in comparison with their numbers. He said that there was evidence showing that boat hire companies were calling for stricter enforcement against BWHM and for increases in BWHM licence fees. In Mr B's view the total number of BWHM boats, taken across the whole network, meant that there was not a problem.

Mr B also referred to the Trust Council Briefing paper of 27 September 2012, on Non-Compliant Continuous Cruising (NCCC), which he said among other measures proposed a policy of breaking up BWHM communities. He said that that the briefing took up many of the measures put forward in trade meetings. He noted that the document created the impression that the Trust did not already have sufficient powers to control towpath mooring.

I pointed out that the organisation on behalf of which Mr B submitted the complaint did not comprise all BWHM, so I could not consider whether there had been any detriment to BWHM who were not its members. I accepted that there may be some detriment to BWHM, but noted that the Trust had for many years had a policy on continuous cruising, and was now seeking to increase its level of enforcement. I did not accept that any potential detriment or unfairness was the result of any maladministration or unfairness, as much as the enforcement of the Trust's policies.

I added that it seemed unlikely that the alleged maladministration may have been likely to influence the way that the Trust applied its rules and policies. Although Mr B provided many examples of what he considered to be detrimental effects, it did not seem to me that there was a clear connection between the alleged maladministration and any detriment. I did note that it was theoretically possible that the alleged maladministration had had a pervasive effect on the implementation of the Trust's policies, but that no immediate connection was visible. I added that the policies had been, and could be, tested in the courts. I did not uphold the complaint.

Case No 687 – renewal of boat licence

Ms C's boat licence was due to expire at the end of August 2012, but she did not receive renewal paperwork. She did not need a licence for her boat at its usual mooring in London, but had one for when she went cruising on other waterways. There was some confusion about the status of her mooring, and whether it could be regarded as a home mooring, and therefore whether she was to be regarded as a continuous cruiser. In the delays arising from the confusion, her boat was for a period not licensed, and she said that because of the risk of enforcement proceedings being taken in this period she was unable to go on trips up the Grand Union Canal.

The Trust explained that in light of a court case it became aware of inaccuracies about the information it held for Ms C's boat, in that it had incorrectly recorded the boat as a continuous cruiser, and had placed a block on the account which meant that Ms C did not receive a reminder. It wanted confirmation that the boat still had a home mooring before it would process the application, but Ms C said that all the Trust required was confirmation that she still held the same mooring which had

formed the basis of her application, and did not see why she needed to complete a new application.

I could find no reason why the Trust may not have a legitimate reason for being confused about the status of Ms C's mooring, and I could see no ulterior motive in it wanting to consider the matter in more detail. In respect of whether Ms C had a legitimate concern about the Trust taking enforcement action had she taken her unlicensed boat cruising on the Grand Union Canal, the Trust told me that it would not have impounded the boat or impeded its movement without issuing a statutory 28 day notice. It seemed to me that Ms C had a good understanding of the waterways, and I could not reasonably conclude that any fears she may have had about enforcement action were justified. The Trust said that Ms C had not indicated a sense of urgency in renewing the licence, and the only evidence that she provided to me that she had notified the Trust about her wish to go on holiday was in an email to Trust after the holiday had been cancelled.

The Trust did accept that there were some shortcomings in its process, and had already apologised. Other than that, I could find no evidence of maladministration. In my view it was Ms C's decision to cancel the holiday, and I did not uphold the complaint.

Case No 700 – assistance to a boater following a canal breach

As a result of breach on the Trent and Mersey Canal at Dutton at the end of September 2012 Mr D was unable to return directly to his home mooring on the Bridgewater Canal at Runcorn. He said that the only route home for which the Trust was willing to provide assistance was by joining a convoy travelling west on the Manchester Ship Canal to Ellesmere Port, but which entailed a long and circuitous route of nearly 100 miles with 108 locks. He was willing to travel east on the Manchester Ship Canal and then transfer to the Bridgewater Canal to return to his home mooring. He said that the Trust did not assist him, but that by his own perseverance he did eventually manage to travel on his preferred route. Mr D wanted the Trust to reimburse his additional fees for using the Manchester Ship Canal, of £138.

The Trust explained that the breach affected around 500 boats, 50 of which needed to be moved to other parts of the network. It pointed out that it was an emergency situation and that it had concentrated its resources on the route favoured by most boaters, via Ellesmere Port. It added that under its terms and conditions it had no statutory obligation to keep the waterways open at all times, and that its licence fees reflected this fact. The Trust had reimbursed the £28 Manchester Ship Canal fees payable by those travelling via Ellesmere Port, and offered the same amount to Mr D, plus a goodwill payment of £50.

I had no reason not to accept in good faith Mr D's comments that the Trust had made it difficult for him to use his referred route, which involved such matters as getting a seaworthiness certificate, and it did seem to me that the Trust may have provided less assistance to him than to other boaters. The Trust was not obliged to reimburse Mr D his full Manchester Ship Canal transit fee, and I decided that its offer of a payment of £28 was fair and reasonable. However, I did accept Mr D's argument that the Trust had not been as helpful as it could have been, and recommended that it increase its goodwill award from £50 to £100, bringing the total award to £128. In doing so I upheld the complaint in part.

Case No 702 – trading from moorings on the Macclesfield Canal

Ms E wished to trade from moorings on the Macclesfield Canal. While she had been offered locations at certain points, she regarded these as unsatisfactory for various reasons. She felt that she had been treated unfairly and inconsistently in comparison with other trade boats, and said that she had had difficulties in dealing with the Trust. She pointed out that there was space at the end of the long term leisure moorings and saw no reason why she could not trade from there, adding that occupancy of the moorings was low.

The Trust explained that Ms E had a business licence for her boat to operate on a roving basis, and that although she had a home mooring she was not permitted to trade from it. It was not prepared to allow her to trade from the long term moorings.

I could consider only whether there may have been maladministration in the way that the Trust had dealt with Ms E, even if there was a suggestion or indeed evidence that it may not have been enforcing its terms and conditions in respect of other trade boats. The Trust is not obliged to allow trading from leisure moorings. This is a policy matter, which I cannot influence, and on this issue I found no evidence of maladministration. As to the allegation of inconsistency and unfair treatment, there did appear to be some evidence, but the Trust said that it would consider what to do about the other traders. I did not uphold the complaint, but I did recommend that the Trust explain to Ms E whether the current low level of occupancy of the long term moorings may be likely to affect its decision not to allow her to trade from there.

Case No 709 – the Trust’s seizure of a boat

Mr F owns a property next to the Kennet & Avon Canal on the offside, adjacent to a lock. He owns a boat, which he moored outside the property on what he said was a historic mooring. The Trust removed the boat under section 8 of the British Waterways Act 1983, and in doing so broke a padlock to gain entry to it. He made a large number of points in his complaint, most of which I could not consider either because they were matters of policy or because they had already been considered in previous complaints. The issues which I did investigate were whether the Trust’s entry to the boat was unlawful, and whether its policy for entering boats was set out in any corporate documents.

Mr F argued that there was no lawful authority permitting the Trust to break into boats during the course a section 8 removal, and maintained that it should have given him 24 hours’ notice. The Trust was satisfied that there had to be an implied right to use forcible entry, in order to give proper effect to the legislation. Mr F pointed out that s.7(2)(b)(i) of the 1983 Act made it clear that the Trust may enter a boat only with 24 hours’ notice, but the Act states that the giving of such notice is in accordance with s.7(2) of the Act, and the boat was impounded under section 8. I could not reasonably conclude that the Trust had unlawfully entered Mr F’s boat, and I did not uphold this part of the complaint.

In respect of whether there were any documents setting out the Trust’s policy for entering boats, the Trust said that there were not. Even if any information had not been available it did not seem to me that events would have taken a different course, and noted that at the point where such information became important

matters were likely to have already reached an advanced stage. I did not uphold this part of the complaint.

Case No 710 – rubbish in the River Soar at Thurmaston

Mr G said that the Trust was failing to keep the river clean, and that rubbish, including traffic cones, furniture and logs had accumulated at a weir. He felt that there should be a grid under the nearby foot to catch the rubbish. While the Trust had said that a grid would cause the river to flood, Mr G said that it flooded anyway.

The Trust accepted that there was a genuine problem but that it did not have the resources to remove all the rubbish. It had created links with other organisations, and had also created volunteer groups, in the area to try to stop the problem happening in the first place, but stressed that it would not happen overnight. The Trust said that there were no grilles at other weirs, and did not consider that this was a solution to this particular problem. I concluded that the Trust was already doing as much as it could and that there were limits to what it could do. I did not uphold the complaint.

Case No 713 – poor customer service from the Trust following an accident

Mrs H has a boat which at the time of the events giving rise to this complaint was on the Kennet & Avon Canal. She does not declare a home mooring and therefore licenses her boat on the basis of continuously cruising. She explained that she had an accident in December 2012 which, while not serious, meant that she had to remain in a particular location for two to three weeks, which would have meant her overstaying beyond the 14 days permitted. Mrs H said that in discussions with the Trust, a staff member had behaved unprofessionally and inappropriately.

The complaint seemed to me to be at least partly about perception of attitudes. There were references in the Trust's evidence to Mrs H overstaying on previous occasions, or moving insufficient distances. It may have been that what the Trust regarded as statements of fact, Mrs H may have regarded as threatening and bullying language. I accepted that Mrs H may have felt bullied, but it did seem to me that discussions had been coloured by previous events and that a conversation may not have developed as it did had Mrs H had a flawless record of moving her boat. There did appear to have been scope for the Trust member of staff to handle things better, but the Trust had apologised and did not consider further action necessary.

Case No 719 – smoke from boats moored outside apartment

Mr J lives in an apartment at the side of the Regent's canal. While there had not previously been problems, the erection of new buildings on the other side of the canal had created a canyon effect, meaning that emissions from canal boats came in through open windows, which gave him and his family headaches. He said that there was also noise pollution.

The Trust explained that the powers of it and the local authority to deal with the problems were very limited and that in practice enforcement was difficult. It proposed a number of measures to alleviate the problems, including the issuing of patrol notices about smoke nuisance, the putting up of signs, investigating whether moorings rings could be installed nearby to encourage mooring elsewhere, and writing to Mr J to explain what he could do when a particular problem occurred.

Mr J suggested that the moorings could be de-designated, but the Trust did not wish to do so, and as this was a policy matter I could not require it to take such a measure. I did accept that Mr J's situation was very difficult, but there was nothing significant that I could do that would prevent the problem occurring in the first place. I recommended that the Trust take the steps it had already proposed, and also to write to him to explain why it could not de-designate the moorings.

Case No 722 – Trust misrepresentation of a boaters' organisation

Mr K, on behalf of Organisation L, representing boaters without home moorings (BWHM), complained that the Trust had published statements which had contained allegations and inaccuracies about the organisation, as a result of which it had suffered injustice, and that continuous cruisers had been discouraged from becoming members. The statements were included in the Trust Council Meeting briefing paper of 27 September 2012 on non-compliant continuous cruising, and the Trust document "Towpath Mooring – Q&As".

There were six issues in the complaint. In the first, in respect of the Trust's statement in the Q&As that Organisation L had argued passionately that it was a basic human right to live on a boat without any restriction on mooring, Mr K said that the organisation had never argued this. I upheld this element of the complaint, and recommended that the Trust publish a correction.

In the second and third issues, again in respect of the Q&As, the Trust had stated that the High Court had conducted two hearings of the organisation's application for judicial review of its interpretation of the relevant legislation on continuous cruising. The Trust went on to say that it had no reason to think that the appeal would change anything. Mr K pointed out, first, that it was he and not the organisation who had brought the action in a personal capacity, and second that to predict that the appeal would fail was a further attempt to discourage boaters from becoming involved with the organisation. I upheld these two elements of the complaint, and recommended that the Trust published corrections.

In the fourth issue, also in respect of the Q&As, the Trust referred to Organisation L as being "relatively new and small". Mr K argued that to make such an allegation was a further attempt to discredit it and to discourage boat dwellers from becoming involved. I regarded the statement as objectively justifiable and I did not uphold this element of the complaint.

In the fifth issue, the Trust briefing paper referred to Organisation L as having rejected the Trust's interpretation of the legislation, and as believing that any boater had a right to settle on the towpath within a specific area without the need to secure a home mooring. It added that the Trust's attempts at constructive engagement with the organisation on such matters had largely failed. Mr K said that the organisation had never argued in favour of an unconstrained right to settle, and that the Trust had made no attempts at constructive engagement with the organisation. He added that the statement that such attempts had failed further compounded the injustice to the organisation. I noted in my report that the relationship between Organisation L and the Trust seemed frequently to be difficult, and also that the organisation had used various channels, such as the courts, and FoIA requests, in dealing with the Trust, but also noted that there had recently seemed to be an improvement in dialogue. I did not uphold this element of the complaint.

In the sixth and final issue, the Trust briefing paper had stated that Organisation L's activities included such issues as campaigning against the Trust's mooring policies on niche websites and Internet groups, submitting successive complaints and FoIA requests, and providing support to boaters within the Trust's enforcement process for failing to demonstrate compliance with mooring guidance. Mr K argued that they were all legitimate activities. I could find nothing in the Trust's statements that suggested that it regarded such activities as not being legitimate, but I did accept Mr K's point that Organisation L had never in its own capacity made an FoIA request, even if some of its members had. I upheld this element of the complaint in part, and recommended that the Trust publish a correction.

Case No 724 – car parking permits at a marina

Mr M moored his boat at a marina with a car park. Until 2012 use of the car park had been free but a private company took it over and converted it to pay and display. Moorers who had been customers since 2008 were issued with two free parking permits, but others received only one. Mr M felt that in being given only one free permit he had been treated unfairly.

The Trust said that some long-standing moorers did have permission to park two cars prior to the introduction of the current pay and display system, and that it was judged that to have removed this permission would have been unfair. It added that the auction description for the moorings did not include free parking.

Whatever the Trust did was likely to have been viewed by some as unfair. I was satisfied that there was an objective basis for the different allocation of free permits depending on how long moorers had been there, and I did not uphold the complaint.

Case No 738 – Mile End Floating Market July and August 2012

Ms N had paid for a permit to moor at the 2012 Olympic floating market, and operate a catering business from her boat, but said that the Trust had breached its terms and conditions by not providing a water tap and other services. In her view she was not liable to pay for the permit, and she had refused an initial offer by the Trust of £100 as a goodwill gesture. In her complaint Ms N said that among matters there had been a lack of promotion of the event, a lack of media presence, poor waste disposal facilities and poor water availability.

The terms and conditions of the permit did not specify the level of media presence or promotional activity so I could not consider these issues. There was also no evidence that she had raised with the Trust the matter of waste disposal, so again I could not consider it. The terms and conditions stated that the Trust would not be liable for the failure of any utility, which I interpreted as including water even though it was not specifically mentioned. Although water was available it was at some distance and difficult to access, and in any case unless the water tap was located next to her boat Ms N would have had to collect water or move her boat.

The Trust accepted that the situation was not ideal, but Ms N has not provided evidence that it had a detrimental impact on her business. The Trust later increased its offer, to reducing the mooring fee by £172, from £532 to £360, bringing it into line with the non-trade mooring fee. Although I requested it, Ms N did not provide evidence that any losses may have exceeded £172, and in any case the terms and conditions did not cover liability for loss of business, or consequential losses from failure to perform the contract. Legally, the Trust was not obliged to make any offer

of payment, but did so on a goodwill basis. In my view the Trust's offer was fair and reasonable and I concluded that it should maintain it.

Case No 742 – marina sanitary facilities

Mrs O had a long-term mooring at a marina. She complained about what she referred to as the filthy conditions of the showers, saying that she had made many phone calls to the Trust but without success. She had asked for £1,400, comprising £800 for full reimbursement of her mooring fees for a period of 21 months, £100 for sundry expenses, and £500 compensation for stress and inconvenience, as well as an apology.

The Trust agreed that the state of the shower trays was unacceptable, and that they would be properly cleaned and probably replaced after a survey. Mrs O did not think that the trays needed replacing, but my view was that it is up to the Trust to decide what to do with its own property. I upheld the complaint in part, and decided that the Trust should make an award of £125 to reflect the stress and inconvenience, as well as any costs she may have incurred. I recognised that this was a fairly modest award, but said that it did take into account the fact that Mrs O had been abusive to Trust staff.

Case No 745 – loss of prompt payment discount

The licence on Mr P's boat became due for renewal on 1 April 2012. He said he had not received the renewal notice in time to benefit from the discount. He also complained about the lack of availability of contractual documentation, the Trust's website management, and its complaint handling, as well as loss of use of the canals while he was trying to renew his licence.

Mr P's view was that it was up to the Trust to ensure that customers received renewal reminders on time. The Trust said that the renewal letter was generated and printed on 15 February 2012, but that in view of the volume of letters it sent out it did not keep a certificate of posting. Given that Mr P had had a boat for some years, I saw no reason why he should not have been aware of the impending deadline, and take action if he received no renewal. Although he said that website information was difficult to find, I found it quite easy to locate. When he did try to renew online, Mr O experienced difficulties, but by that time he would not have been able to benefit from the discount.

In respect of Mr O's argument that he temporarily lost the use of the canals, I doubted that in this situation the Trust would have applied sanctions, especially if he had let the Trust know beforehand, and I did not accept that he had suffered any injustice or material detriment.

I did not uphold the complaint, but in response to a request from Mr O after I had concluded my investigation, that the Trust consider referring on its renewal form to where the terms and conditions could be found, the Trust agreed to do so.

Case No 762 – Mile End Floating Market July and August 2012

Mr P complained about the lack of facilities at the market, and that he had suffered a loss because of the lack of availability of water, because of inadequate mooring facilities, and because of the lack of accurate and timely publicity. He also argued that because he had not signed the mooring contract, no such contract existed.

I was satisfied that even though Mr P may not have signed the contract, it could be deemed to exist, and indeed that if it did not the rest of his complaint would fall. The Trust had admitted that the facilities were not as he could reasonably have expected, and had offered a reduction in mooring fee from £582.35 to £360, which was the level for a non-trade mooring. In my view the Trust's offer was fair and reasonable and I concluded that it should maintain it.