THE WATERWAYS OMBUDSMAN

RULES OF THE WATERWAYS OMBUDSMAN SCHEME

The purpose of the Waterways Ombudsman Scheme ("the Scheme") is to make available a Waterways Ombudsman, who is independent and accessible, to investigate in an efficient, effective, transparent and fair manner complaints of injustice suffered by a complainant that arise from maladministration or unfair treatment by any Scheme Member Bodies, as defined in Appendix 1.

These Rules have been made to ensure that the Scheme is fully compliant with the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 {SI No. 542) and shall meet the criteria for the recognition of the office of Waterways Ombudsman as an accredited full member of the Ombudsman Association.

Appendix 1 includes a list of current Waterways who are Scheme Member Bodies together with any specific Rules applying to those Scheme Member Bodies.

The Waterways Ombudsman Committee

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

Constitution and Membership

2. The Committee shall comprise at least five, but no more than ten persons appointed as follows:

   a) One non-voting member appointed by each Scheme Member Body:
   b) Two non-voting observers appointed by the Canal & River Trust, one of whom shall be a Canal & River Trust Trustee and the other a Canal & River Trust employee:
   c) Up to seven members who meet the criteria for non-alignment set out in paragraph 4 and who are appointed by the Chair of the Committee.

3. Appointments to the Committee shall be made as follows:
   a) Any appointment of non-aligned members to the Committee shall be for a term of three years. Any non-aligned member of the Committee shall be eligible to be re-appointed for a second term or partial term of between one and three years but no longer save for any member appointed under paragraph 5 below as Committee Chair who needs to serve his/her remainder of their appointment and can be reappointed for such term to achieve that purpose. Members are expected to complete their term unless unusual circumstances prevent it.

   b) Any appointment of the two non-voting observers appointed by the Canal & River Trust to the Committee shall correspond with their terms of office

at Canal & River Trust

c) Any appointment of the one non-voting member appointed by each Scheme Member Body to the Committee shall correspond with their terms of office with the Scheme Body.

d) The user representatives' term of appointment shall correspond with their appointment on the Canal & River Trust's Council.

4. To meet the criteria for non-alignment, the Committee member:

a) shall not be, or ever have been, a Trustee, Council member or employee of the any Scheme Member Body or any of their subsidiaries, nor have a material association with such a person or those bodies.

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 any Scheme Member Body.

c) shall not be, or ever have been, an officeholder, employee or committee member of any organisation or body representing persons or businesses with an interest in any waterways owned or managed by any Scheme Member Body covered by the Scheme.

5. The Committee shall appoint one of the non-aligned members (as defined in paragraph 4) or through external recruitment to be the Committee Chair for a period of three years or a partial term of between one and three years and may at any time revoke such appointment. The Committee may also appoint a Vice Chair from within its membership if it is considered appropriate and should endeavor to ensure where possible that this individual is on a different term cycle than the Chair.

6. The quorum for any meeting of the Committee shall be three non-aligned members.

7. A user representative, drawn from the Canal & River Trust's Council membership, may be an observer at all Committee meetings and entitled to receive the papers of the meeting. The user representative shall not be counted in quorum and has no voting rights.

8. Except where provided otherwise in these Rules, the Committee may decide any question by agreement of the majority of those non-aligned members 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.

9. To ensure the independence and impartiality of the Committee, the Chair shall have a casting vote. If the elected Chair cannot attend any meeting, or the position of Chair is vacant, the vice chair (if appointed), or one of the other non-aligned members will act as Chair for the purposes of that meeting.

10. These Rules shall not be amended without the agreement of a majority of non-aligned members of the Committee present.

Appointment and removal from office of the Waterways Ombudsman

11. The Committee shall have the exclusive power to appoint, and to remove from office, the Waterways Ombudsman.

12. 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 the Canal & River Trust in its capacity as the body responsible for funding the Scheme, and any representations made by any other Scheme Member Bodies. 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.

13. 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.

14. Appointments to the office of Waterways Ombudsman shall be for a period of five years (sufficient duration not to undermine independence) and an incumbent may be reappointed for a second term of a minimum of two years and a maximum of five years without competitive selection.

15. 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; grounds of competence; if the Ombudsman brings the organisation into disrepute; 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.

Other Duties of the Committee

16. 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 these Rules; and
    b) that the funding of the office of the Waterways Ombudsman and of the other

activities required by these Rules is sufficient for their efficient and effective operation.

17. 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 Chair of the relevant Scheme Member Body. If, having allowed an adequate period for a remedy to be effected, the Committee remains dissatisfied it may make a public declaration of such dissatisfaction.

18. The Committee shall receive reports from the Scheme Member Bodies, and/or from the Waterways Ombudsman on the method and adequacy of publicising the availability of the Scheme to potential complainants.

19. The Committee shall publish an annual report which may be published together with the annual report of the Waterways Ombudsman.

20. 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.

21. The Committee shall receive Company Secretarial support from the Canal & River Trust, as per the Service Level Agreement in place at the time.

THE WATERWAYS OMBUDSMAN

Principal Powers and Duties

22. The principal powers and duties of the Waterways Ombudsman shall be:

a) to receive complaints of injustice suffered by a complainant that arise from maladministration or unfair treatment by a Scheme Member Body, in carrying out their activities;
b) to determine whether such complaints are eligible to be considered under these Rules.
c) subject to these Rules:
   i. to investigate such complaints and/or facilitate their resolution or withdrawal; and if not resolved or withdrawn, to determine whether the complaint is well founded; and if so,
   ii. to make (to the extent the Waterways Ombudsman considers necessary and appropriate) such recommendations or Award as the Waterways Ombudsman considers to be fair and reasonable in all the circumstances; and
d) to act in a fair, reasonable and rational manner at all times.

Procedure

23. The Waterways 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 Scheme Member Body named in the complaint. If it is decided that the complaint is not eligible, the Waterways Ombudsman shall give reasons in writing for such a decision within 3 weeks of the date upon which the Complaint File (as defined under paragraph 43) was received.

24. Subject to other provisions of these Rules, the Waterways Ombudsman shall have discretion to decide the procedures to be adopted in considering and investigating complaints.

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

a) the law;
b) any relevant and generally accepted policy or process of the Scheme Member Body 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.

26. The Waterways Ombudsman shall notify the parties to the dispute as soon as the Complete Complaint File (as defined under paragraph 45) has been received.

27. The Waterways Ombudsman shall notify the complainant and the body named in the complaint of the decision within 90 days from the date upon which the Complete Complaint File was received except in highly complex disputes when this time may be extended. In these circumstances, the Waterways Ombudsman shall inform the parties of the extension and the expected length of time required to complete the investigation and to reach a decision.

Jurisdiction of the Waterways Ombudsman Scheme

28. The Waterways Ombudsman shall not consider a complaint from a complainant who is not an eligible complainant. Such complaints are outside the jurisdiction of the Waterways Ombudsman Scheme. 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 £6.5m for charities, £4m for trusts or £2m for micro entities at the time the cause of the complaint was first brought to the attention of the body subject to the complaint; or

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 £6.5m for charities, £4m for trusts or £2m for micro entities at the time the cause of the complaint was first brought to the attention of the body subject to the complaint.

29. Where a complaint concerns the observance or non-observance of a policy of a Scheme Member Body relating to fair competition, the requirements for being an eligible complainant in relation to that complaint shall be applied without any limitation by reference to the annual income or turnover of the complainant.

30. The Waterways Ombudsman shall not consider any complaint concerning the current or former employment, or voluntary work, of any person {including the complainant) by the Scheme Member Body subject to the complaint. This includes all terms, conditions and policies applying to the member's workforce, agents and contractors, including any actions and resulting investigations undertaken by the member relating to those issues. Such complaints are outside the jurisdiction of the Waterways Ombudsman Scheme.

31. The Waterways Ombudsman shall not accept a complaint which relates to a Public Consultation, a wider policy decision duly made by the Scheme member (rather than the application of the policy in the complainant's case) or which concerns a legal claim made against the Scheme member. For the purposes of these rules a 'legal claim' is one in which legal proceedings have been initiated or, in the opinion of the Ombudsman, appear likely and appropriate in the circumstances of the case. Such cases can include disputes in which the scheme members legal team are instructed and in which the Ombudsman is satisfied that the matter continues to be most appropriately managed that way. Such complaints are outside the Scheme members internal complaints procedures and therefore outside the jurisdiction of the Waterways Ombudsman Scheme.

32. Where a complaint is within jurisdiction, the Waterways Ombudsman may only refuse to deal with (or cease to deal with) it on one or more of the following grounds:

a) the complaint has not completed the final level of the internal complaints of the Scheme member (provided those processes are being properly complied with, without delay);
b) the complaint has not been referred to the Waterways Ombudsman within 12 months of the conclusion, or of the deemed conclusion, of the final level of such internal complaints procedure and there are no extenuating circumstances which would extend the 12-month threshold.

c) the complaint is being, or has been previously, considered by a court, tribunal, other judicial or regulatory body or another Alternative Dispute Resolution entity, or is one which has already been considered by the ombudsman. or

d) dealing with such a complaint would seriously impair the effective operation of the Waterways Ombudsman Scheme; or

e) the complaint is, in the view of the Waterways Ombudsman, vexatious or frivolous.

None of the provisions of this paragraph shall prevent the Waterways Ombudsman from considering, in connection with a complaint on one of the grounds listed in this paragraph 31, a complaint about the procedural handling of that complaint.

33. Where an actual or potential conflict of interest arises in relation to a complaint, and there is nobody else available to consider the complaint, the Waterways Ombudsman shall explain to both parties the circumstances of the conflict of interest, that they have a right to object to him/her continuing to handle their dispute and that he/she can continue with the complaint only if no party objects. The Waterways Ombudsman will maintain a record of any actual or potential conflicts of interest.

34. The complainant may withdraw their complaint at any stage.

Provision of Information

35. The Waterways Ombudsman may require the body which is the subject of the complaint to disclose any documents and to provide any information which in the view of the Waterways Ombudsman relates to the complaint.

If that body possesses such information, it shall as soon as reasonably practical disclose it to the Waterways Ombudsman (unless it certifies to the Waterways 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 reasonable endeavours had been used to obtain such consent).

36. If any party to a complaint supplies information to the Waterways Ombudsman and requests that the Waterways Ombudsman treat it as confidential, the Waterways 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 Waterways Ombudsman's ability to make a fair and reasonable

determination of the complaint; and

b) the Waterways Ombudsman is satisfied that the confidentiality request has been made in good faith, and for good reason and not with the aim of obstructing a fair investigation.

Recommendations and Awards

37. Without prejudice to the generality of paragraph 22, and subject to the provisions relating to Awards specified in Appendix 2, the Waterways Ombudsman may recommend or require the Member to take some action or to make an Award that in the opinion of the Waterways 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 appropriately 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 having regard to the scale in Appendix 2. Save always that the Waterways Ombudsman shall not make an Award for distress or inconvenience where the cause of complaint relates to commercial or business activities of the complainant.

38. The Waterways Ombudsman has the right to make any recommendation they feel is appropriate to properly provide remedy to a complainant, including financial compensation. Any recommendations and/or Award shall be in writing and shall include the Waterways Ombudsman's reasons for making the recommendations or Award.

Annual Report

39. The Waterways Ombudsman shall publish an annual report containing all information required by the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 including but not limited to a summary of the eligible complaints received and decided in the previous year, the recommendations and Awards made by the Waterways Ombudsman and any issues of more general significance arising from individual complaints.

ROLE OF THE SCHEME MEMBER BODIES

Funding of the Scheme

40. The Waterways Ombudsman may at any time bring to the attention of the Committee any apparent shortcoming in the funding of the Scheme.

41. Canal & River Trust is the principal body responsible for funding the Scheme; other Scheme Member Bodies will make financial contributions agreed from time to time with the Committee.

Implementation of Recommendations and Awards

42. The Scheme Member Bodies shall comply with any recommendations, or any Award made by the Waterways Ombudsman, subject to the provisions of paragraph 37 and the limits set out in Appendix 1, unless such compliance might result in the Trustees of those bodies breaching their legal obligations as charitable trustees or company directors. If the Trustees do refuse to comply, the Scheme Member Body will publish their reasons on their website and shall make any further publication of such non-compliance as is reasonably required by the Waterways Ombudsman.

43. Unless the Trustees of the Scheme Member Body refuse to comply in accordance with paragraph 43, on the making of any recommendations or of an Award by the Waterways Ombudsman, the body in question 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

44. In these Rules:

a) "Award" means compensation in money or monies worth.
b) "Subsidiary" has the meaning given by section 736 Companies Act 1985.
c) "Complaint File" means the file comprising all relevant information relating to the complaint (including all written and oral evidence) received from both the complainant and the body against which the complaint has been made.
d) "Complete Complaint File" means the Complaint File as well as any required expert opinions, witness statements, external evidence or any other relevant evidence {including all written and oral evidence) which is necessary for the Waterways Ombudsman to investigate and make a decision on that complaint.

Appendix 1

List of members of the Scheme and specific provisions that apply.

Scheme Member Bodies

- Canal & River Trust and its subsidiaries
- Avon Navigation Trust

Appendix 2 (Rule 37 c)

It is worth noting that historically the level of financial remedy is relatively low, reflecting the nature of the complaints received. Non-financial remedies, such as requiring the Member to take some specific action or provide an explanation or apology are also requirements made to resolve complaints. Since 2018, there have been 57 investigations resulting in 18 direct financial awards. The most common award recommended was £100 and the highest ever award was £500.

The Ombudsman will determine the impact in categories from nominal, where no monetary award would be made, through to moderate, substantial, severe, and extreme, where the highest award of £10,000 or more would be made.

Level	Description
Nominal	The complainant has experienced a low impact injustice such as annoyance, frustration, worry or inconvenience, typically from a single incidence of maladministration or service failure where the effect on the complainant is short lived and there are no other adverse effects or ongoing wider impact. The Ombudsman will usually consider an apology to be an appropriate remedy for these cases.
Moderate	The Ombudsman considers what has gone wrong has had a relatively low impact on the complainant resulting in a degree of distress or inconvenience or the injustice was more severe but was of short duration.
Substantial	The impact on the complainant in terms of distress, worry or inconvenience has been moderate but over a significant period. Or the impact has been substantial but for a short time.
Severe	The impact has had a significant and lasting effect on the complainant, affecting their ability to live a relatively normal life and has lasted for a very prolonged period.
Extreme	The most serious cases involving profound, devastating, or irreversible impacts on the person affected.