



THE WATERWAYS  
**OMBUDSMAN**



Annual Reports of

The Waterways Ombudsman  
Committee

and

The Waterways Ombudsman

for 2008-09





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## ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN COMMITTEE FOR 2008-09

### **The Committee and the Ombudsman**

1. This is the fourth annual report of the Committee, covering the period April 2008 to March 2009. The Committee agreed that this year the annual report would be published electronically on the scheme's website, with paper copies being provided when requested.

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

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

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

3. The Committee has eight members. Of those, three (including the current Chairman) are independent and three are appointed by the British Waterways Advisory Forum (BWAFF) - ie from groups, such as users and businesses, with interests in the waterways. The remaining two members are appointed by British Waterways. Full details of the membership of the Committee are given at the end of this report. During the year two of the independent members of the Committee have been reappointed for a second term: Mr Miles Smith until 30 March 2010 and Mr Michael Reddy until 30 March 2011. Different terms were selected so that changes to the Committee's membership are staggered. Two BWAFF members retired and were replaced during the year. Mr Nigel Stevens' replacement by Mr Geoff Ashton was mentioned in the Committee's last annual report. Since then Mr Sam Hollis also stood down and was replaced by Mr Peter Lea. The Committee was very grateful for the valuable contribution both retiring members made to the work of the Committee.

4. The Committee met once during the year, in March 2009. Minutes of Committee meetings are available on the Waterways Ombudsman scheme's website at [www.waterways-ombudsman.org](http://www.waterways-ombudsman.org).

### **The Scheme**

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

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

### **Customer satisfaction**

6. A customer satisfaction survey for the Committee has operated since November 2007, with comments being sent to the Chairman. To the end of April 2009, 29 forms had been sent to people following completion of an investigation and 21 to enquirers. 21 forms (a very high response rate of 72%) had been returned regarding investigations but only eight regarding enquiries (a low response rate of only 38%). The forms had been sent to people whose complaints had been upheld, dismissed or where they had had to be declined for consideration as out of jurisdiction.

#### Enquirers' views

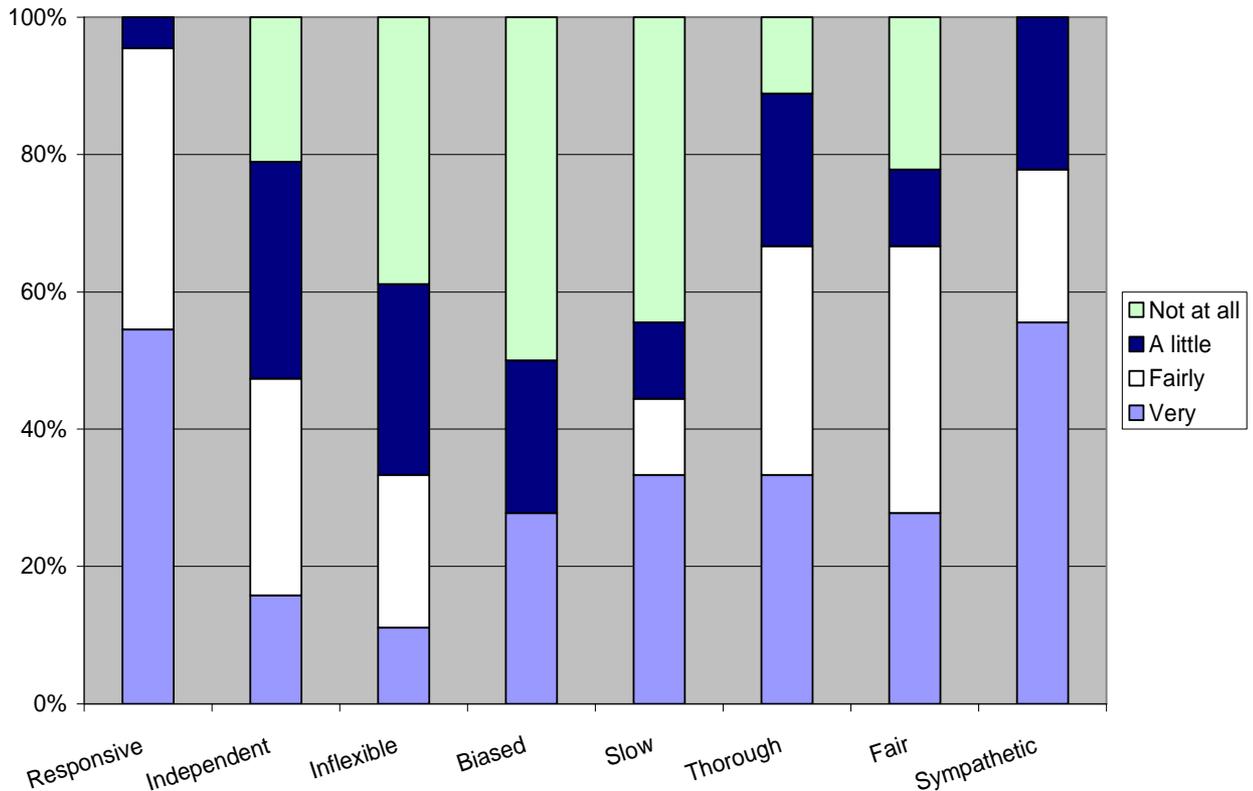
7. The limited response from enquirers showed that none had experienced any difficulty in finding out about the Ombudsman. Of those who responded to the particular questions:

- all had found the response very or fairly prompt;
- six out of eight had found the response very or fairly helpful;
- three out of four had found the response fairly or very sympathetic;
- four out of four had found the response fairly or very thorough.

#### Views of those whose complaints were investigated

8. A large majority of those surveyed felt that the Ombudsman had understood their complaints and they had been kept adequately informed about progress (79% said they felt the Ombudsman had understood matters very or fairly well and 80% that she had kept them very or fairly well informed). The chart below shows the views given about some other aspects of the service as perceived by complainants. As can be seen, the service scored best on responsiveness, sympathy and thoroughness.

Ratings of experience of the service



9. Despite nearly half the respondents doubting the independence of the Ombudsman and nearly a quarter thinking the service was very biased, nearly 70% thought the service was fair or very fair. This may reflect the difference between people’s expectations and what they actually experienced: but it indicates that there is still room for improved communication about the genuinely high level of independence and impartiality of the scheme. Nearly half the respondents felt the service was fairly or very slow. This is not surprising given that some cases had to queue during the first part of the period covered, when the Ombudsman was very busy dealing with a sudden increase in workload. But this proportion has reduced significantly in more recent responses, confirming that matters improved once the peak in workload passed. (The Ombudsman’s report describes the strategy adopted to reduce the risk of a similar problem in future.)

10. Ten respondents said they were fairly or very happy with the way their complaint had been handled, whereas eight were fairly or very dissatisfied. The level of dissatisfaction needs to be reads in the light of the fact that seven out of the 20 respondents did not agree with the Ombudsman’s decision at all and a further seven only partly. Although the question asked about views on the handling of the complaint, inevitably not all complaints will be upheld and it is known that views about Ombudsman schemes are often affected significantly by the eventual decision. Nevertheless thirteen out of

twenty respondents said that they would recommend friends or family to contact the scheme about a complaint.

11. The Committee considered the wide range of general comments made by complainants when invited to recommend one change to improve the service. Some comments seemed to suggest that the respondents expected more of the Ombudsman scheme than it could ever achieve, because they would like it to have a more general regulatory role than is appropriate for an Ombudsman scheme. The Committee did not feel that the comments indicated any need for significant revision to the scheme.

12. Two complaints about the Ombudsman's actions had been sent to the Chairman and were discussed by the Committee. Both related to the merits of the Ombudsman's decision (which is not a matter for the Committee), rather than the procedure or manner in which the complaint was actually handled (which is a matter for the Committee). The Committee decided there were no grounds to intervene, as there was no evidence of a failure by the Ombudsman to investigate the complaints thoroughly or to act in accordance with the Rules of the Scheme.

### **Service Standards**

13. The Committee decided to set improved target service standards for the Ombudsman in 2009-10:

- 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 three weeks of initial contact in 90% of cases;
- 80% of investigations complete within six months of acceptance.

### **Funding of the Scheme**

14. The Ombudsman reported that no concerns had arisen in relation to funding of the Scheme by British Waterways, which had funded all the expenditure she felt was appropriate.

### **Conclusion**

15. The Committee have been satisfied with the operation and funding of the scheme during 2008-09. They will continue to keep matters under scrutiny during 2009-10.

## **Members of the Committee – at the end of 2008-09**

### Chairman

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

### Other Independent Members

**Michael Reddy**, Deputy Adjudicator of the Office of the Independent Adjudicator for Higher Education, previously an Ombudsman of the Financial Ombudsman Service.

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

### Members appointed by British Waterways Advisory Forum

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

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

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

### Members appointed by British Waterways

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

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



THE WATERWAYS  
**OMBUDSMAN**



ANNUAL REPORT OF THE WATERWAYS  
OMBUDSMAN FOR 2008-09

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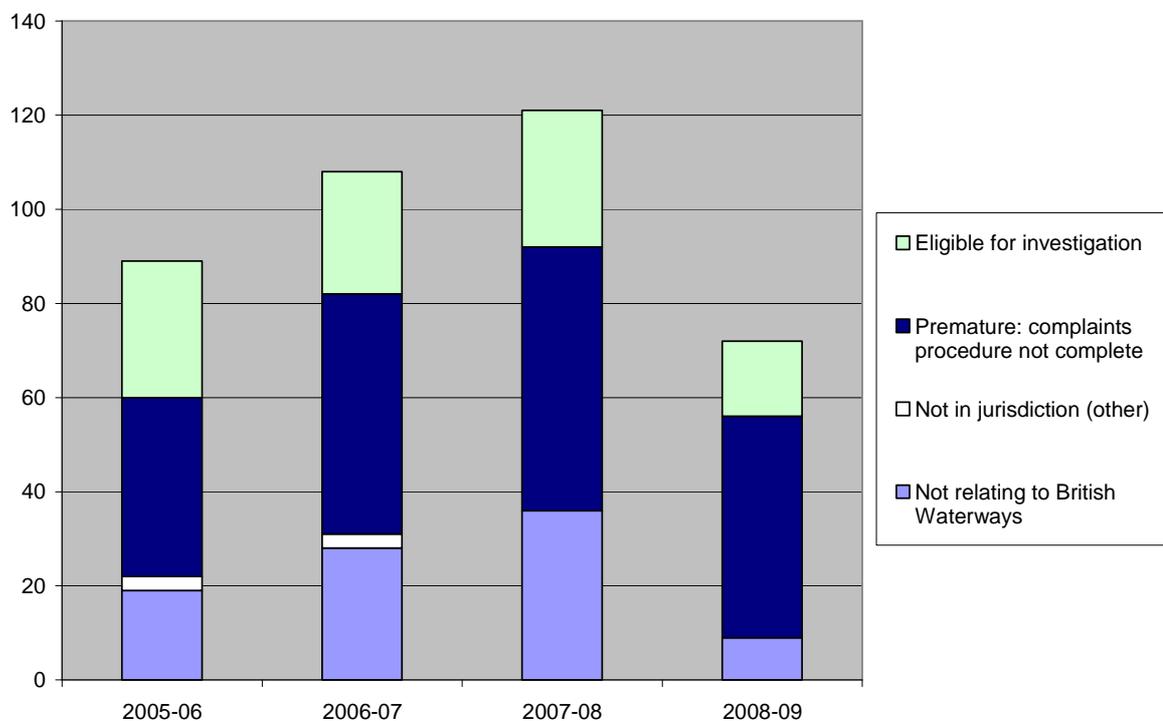
## Introduction

1. This is my fourth annual report as Waterways Ombudsmen. It covers the period from April 2008 to March 2009. For the first time this saw a fall, and a significant one, in the number of complaints.

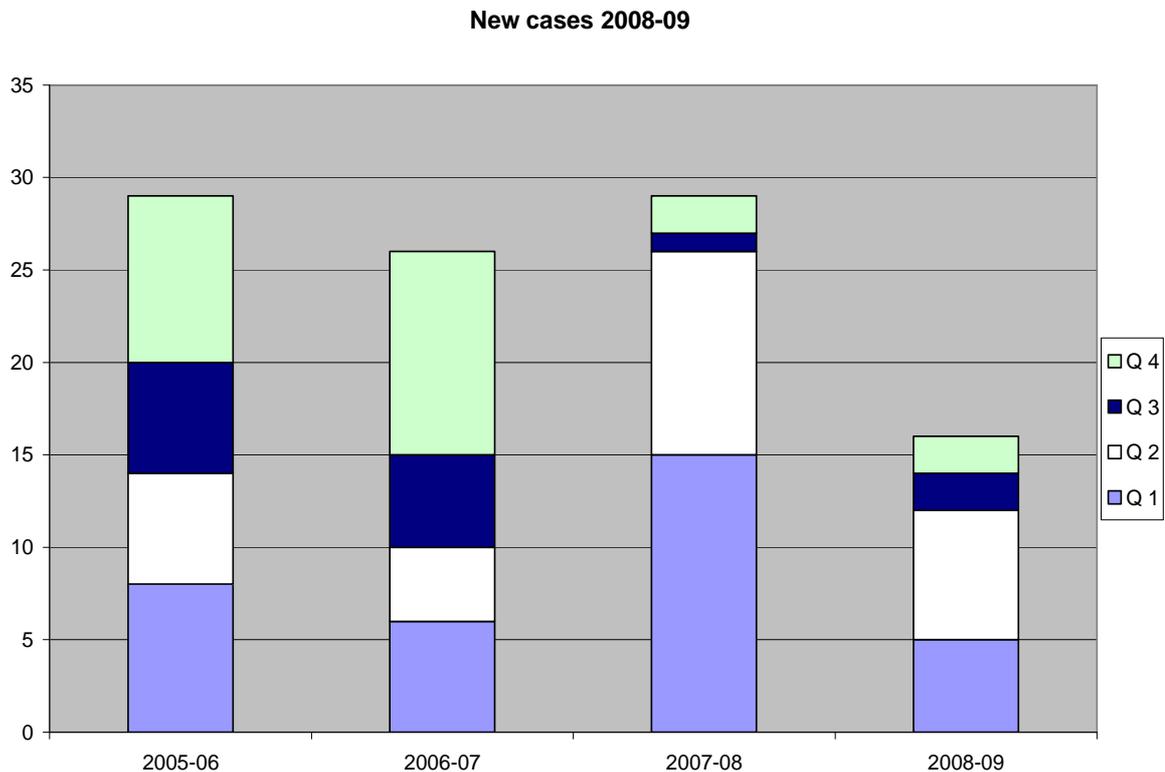
## Casework - workload

2. I dealt with 72 enquiries (compared to 121 in 2007-08). This is in part due to receiving far fewer inappropriate enquiries about matters unrelated to British Waterways: down from 36 (28%) to 9 (12.5%). This probably reflects the better availability of information about the scheme and my having identified, and had corrected, an advice website which was previously wrongly referring people with complaints about water suppliers to the scheme.

Enquiries work



3. I can only consider complaints put to me which have completed stage 2 of British Waterways' complaints procedure (or where the procedure has failed). 16 of the enquiries were complaints within my jurisdiction which I was able to accept for consideration. Again this number has fallen very significantly from last year's figure of 29. See the chart below for the number of new cases in jurisdiction each quarter.



4. This fall could have been for various reasons including because:

- fewer complaints were entering British Waterways' complaints system at stage 1; or
- British Waterways were resolving more at either stage 1 or stage 2 of their complaints procedure; or
- fewer dissatisfied people who had completed stage 2 were approaching me.

5. In order to help me assess which of these was most likely, British Waterways helpfully let me have data on the complaints going through their own system. The table below shows the new complaints at each stage each year since 2004-05.

	<b>BW Stage 1</b>	<b>BW Stage 2</b>	<b>Ombudsman</b>
2004-05	791	67	15
2005-06	1001	99	29
2006-07	762	89	26
2007-08	521	68	29
2008-09	417	63	16

So the percentages progressing from stage 1 to stage 2, stage 2 to me and altogether from stage 1 to me were as follows:

	<b>Stage 1 to Stage 2</b>	<b>Stage 2 to Ombudsman</b>	<b>Stage 1 to Ombudsman</b>
2004-05	8.5	22.4	<b>1.9</b>
2005-06	9.9	29.3	<b>2.9</b>
2006-07	11.7	29.2	<b>3.4</b>
2007-08	13.1	42.6	<b>5.6</b>
2008-09	15.1	25.4	<b>3.6</b>

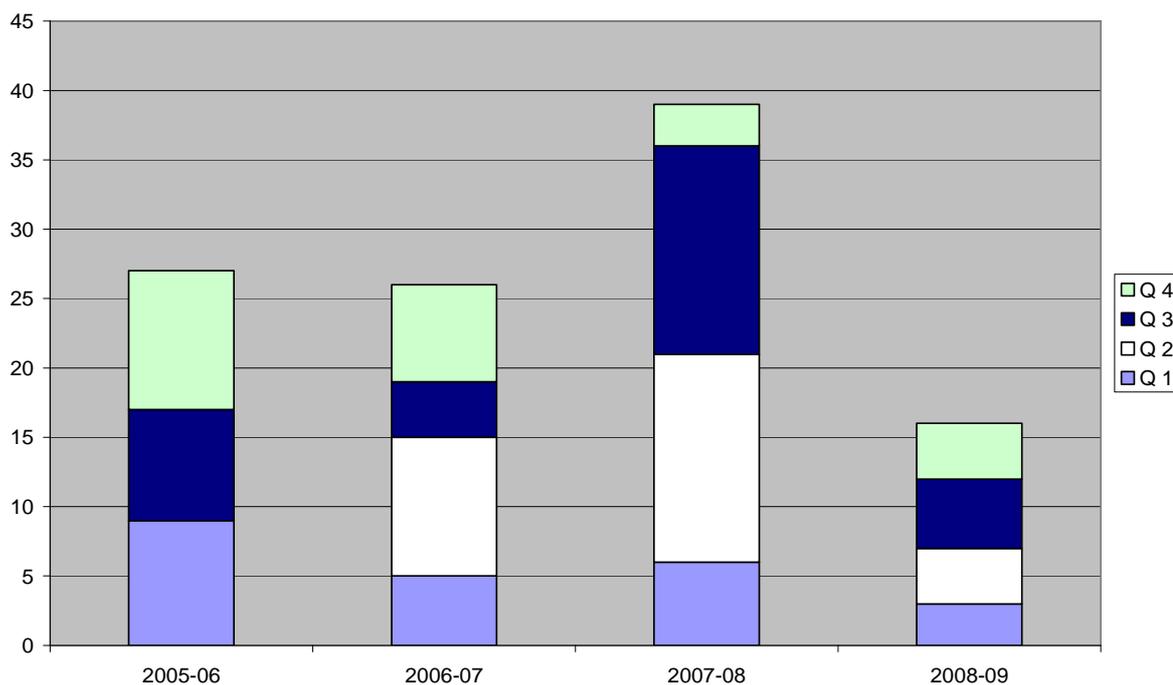
6. The data above seem to me to show:

- that the number of complaints entering the British Waterways' system at stage 1 has fallen dramatically, but a decreasing proportion are being resolved at stage 1;
- apart from an anomalous peak in 2007-08, the proportion of complaints progressing to me from stage 2 is fairly static;
- overall an underlying fairly static position (with probably even a slight rising trend) regarding the proportion of complaints entering the British Waterways' complaints procedure which eventually come on to me;
- the drop in my workload can be accounted for entirely by the fall in the number of complaints entering British Waterways' system.

7. Interestingly the first three months of 2009-10 have seen seven new cases being accepted, which would see the workload returning very close to the much higher 2007-08 levels if similar numbers of complaints were received in the rest of the year. It is far too soon to tell if this will occur, though I understand that British Waterways have also seen an increase in complaints at stage 2.

8. I completed 16 investigations this year compared to 39 last year and 26 the year before. See the following chart for the number of cases completed each quarter.

Cases completed quarterly



Of the 16 completed cases 10 were not upheld, one was discontinued, on one I made no finding (because the decision was so finely balanced that a decision either way might have been unfair, British Waterways were not willing to negotiate a compromise settlement and both parties began raising points of law which I could not resolve) and four cases were resolved to the satisfaction of the complainant after action by British Waterways following my intervention. The proportion of cases upheld or resolved in that way is rather lower than in previous years and I have asked myself whether I am being less robust. But I do not think so. It may be an indicator that British Waterways are managing to resolve more of the justified complaints themselves: or it could be a more random fluctuation.

9. The average time to complete a case was 110 days (a significant improvement on 148 days the previous year), but with quite a varied range.

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

10. Three-quarters of the completed investigations related to boating issues. Of those, three complaints related in some way to enforcement action (two from people subject to Section 8 notices and one from a boater who felt action against others was inadequate), two were about refusal of permission to establish a mooring, two about mooring fees and two about handling of

licence fees. Two complaints were from people with a commercial relationship with British Waterways. Subjects of other complaints included a parking penalty charge, provision of a lifebelt and liaison with residents about maintenance of a towpath which is also a public footpath. (Summaries of all completed investigations can be found in Annex B.) One investigated complaint related to Scotland and the rest to England. One of the complaints related to British Waterways Marinas Limited (BWML) and the rest to British Waterways directly.

### **Issues arising from complaints**

11. It is harder than ever to discern any strong themes arising from an even smaller sample of cases, but the handling of complaints remains an issue and some other points are worth a mention.

### ***Complaints handling***

12. One interpretation of the complaint statistics is that British Waterways have given far less cause for complaint than in the past, or that more concerns which did arise have been resolved informally without the need for the complaints procedure to be used at all. Either of those would be cause for congratulations. However regrettably, as last year, I have come across a number of instances where letters of complaint seem to have been lost, ignored or handled fully or partly outside the complaints system. The worst example of this was in case no 353, where serious concerns about mistakes in the handling of a licence application were not put into the second stage of the complaints procedure when they should have been and some correspondence about this simply received no reply. In case 326 similarly an initial letter asking for the complaint to move to stage 2 received no reply. When the complainant chased that up the reply she received was not from a Director under stage 2 of the complaints procedure and she was not told of her right to approach me. In case 348, it took over six months and at least three contacts with British Waterways before the complainant received any substantive response and even then the matter had not been registered as a formal complaint.

13. An enquiry I received close to the year end raised another cause for concern: about the handling of complaints which are similar to ongoing ones. The complainant had raised various concerns, some of which were very similar to those in complaint 390, about traffic lights on the Gloucester and Sharpness Canal. He never received any response on the traffic lights issue when he first complained (because that issue was already being considered by a Director). When he asked for his complaint to move to stage 2 it did not appear that it was ever logged as a stage 2 complaint or passed to a Director: instead he received a further letter from a local manager, which did not inform him of his right to complain to me. As I pointed out to British Waterways at the time, I cannot see that the fact that someone else has complained about similar matters means that a complaint should not be accepted, logged, responded to by a Director informing the complainant of their right to approach me. British Waterways said they did not have any

policy of dealing with multiple complaints differently, and that there had been no attempt to deny the complainant their right to approach me. They said it had been an oversight which they would ensure did not occur. I hope that that is the case.

14. I am aware of these issues because the complainants persisted and eventually approached me: I cannot tell how many other people may have been treated similarly but simply given up on their attempt to complain. It does cast some doubt on how far the reduction in recorded complaints reflects a reduced level of dissatisfaction. I look to British Waterways to reduce the incidence of such problems in future. I have offered to contribute to training for key staff on complaints handling.

15. I am pleased to say that I have not had similar problems to previous years in responses to recommendations and indeed have been able to resolve a number of complaints informally because of a positive response by British Waterways following my involvement.

16. During the year I did have cause to express concern to British Waterways about their failure to comply with the rules of the scheme which require them to provide me with all the relevant documents I reasonably require. This occurred in case 288 where, only after issue of a draft report, did I discover that they had omitted to send me a copy of a particularly significant email. They stated categorically that this had not been deliberate and gave a plausible explanation for how the omission could have occurred. They apologised to me and the complainant. In the circumstances I did not feel that I should take the matter further except to emphasise strongly the importance of thorough checks to ensure that in future I am always provided with all relevant information I require.

### ***Enforcement action***

17. It is not surprising that, as British Waterways have stepped up their enforcement action, I am beginning to see more complaints and enquiries about that. This can be quite a divisive issue in the boating community, particularly in respect of continuous cruising, with strong feeling being generated both amongst some continuous cruisers who feel they are being harassed and some other boaters who still feel inadequate action is taken against people abusing the system.

18. Clearly I entirely support British Waterways' right to take reasonable and appropriate action against people who fail to comply with proper licensing or other requirements, but it is important that they go about this work without maladministration or unfairness. I was concerned, in case 347, about the adequacy of some of their procedures: in particular that no original copy of a Section 8 notice (of intention to remove a boat) had been kept and that British Waterways were not able to produce any evidence that it had been actually sent to the complainant. I was pleased that they recognised the need for improvements.

### ***Administration of licence and mooring fees***

19. I have also seen more enquiries about problems with the administration of licence and mooring fees. Most such complainants have not returned to me after I have referred them into the internal complaints procedure, suggesting that at least that has successfully resolved the concern. However in one case (case 353) where very serious problems had arisen, the complainants' efforts to use the complaints procedure failed and matters were not resolved until I intervened. British Waterways then concluded that the complainants had been treated appallingly and paid substantial compensation.

### ***Mooring requests***

20. I have also seen more complaints and enquiries about refusal of requests to establish on-line moorings: usually 'end of garden' moorings adjacent to privately owned land. Again this can be quite a controversial issue. Whilst many boaters may in principle agree with British Waterways' policy of creating more offline moorings whilst reducing numbers of on-line moorings and restricting the creation of new ones, not all do. In particular people wishing to moor in particular online sites which meet their individual needs, can be very disappointed when such requests are refused. It is not within my remit to change policies or to determine particular applications: I have to base my decisions on any relevant complaints on the application of the policies and procedures.

### **Contacts with stakeholders**

21. During the year I have attended:

- the National Boat Festival at Autherley Junction at the invitation of the Inland Waterways Association;
- a reception held by British Waterways at the Scottish Parliament building (as a way of meeting stakeholders in Scotland);
- British Waterways' Annual General Meeting in Birmingham;
- 2008 conference of AINA (Association of Inland Navigation Authorities).

As always, on each occasion I have tried to make the most of the opportunity to meet as many stakeholders as possible.

### **Implementation of plans for the scheme**

22. In the 2007-008 Annual Report I indicated that my plans for 2008-09 included:

- reviewing further findings from the customer satisfaction survey, once a more significant sample of data had been gathered and to take any necessary action to improve customer focus;
- developing more documentation on formal policies, procedures and standards following the review against the BIOA guide;

- completing arrangements for appointing assistants who could be called upon to help with sudden increases in work, to reduce the risk of delays.

23. Details of the review of findings of the customer survey are included in the Committee's annual report.

24. During the year I developed draft policies on

- service standards;
- data protection;
- follow up of recommendations;
- unacceptable actions and restricting contact.

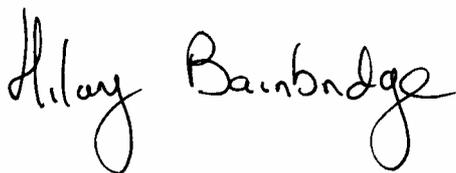
These proposals were put to the Committee, and after some minor amendments have now been adopted, and placed on the website.

25. Despite the fall in workload during 2008-09 I went ahead with the appointment of contract assistants, so that they would be available in case workload increased sharply again. Three assistants, all very experienced in Ombudsman work, were appointed in December 2008. Their contracts do not guarantee them any work at all, but mean that they are now available to be called upon at short notice if necessary. They would assist with handling of complaints, but all final decisions on complaints would remain with me. The workload has not necessitated their use so far, other than that one has provided some limited cover whilst I was on leave.

### **Plans for 2009-10**

26. In 2009-10 as well as routine tasks I plan to:

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



Hilary Bainbridge  
Waterways Ombudsman



## Annex A

### Detailed data on enquiries – 2008-09

Group		
A	Not relating to British Waterways	9
B	Premature: internal complaints procedure not complete	47
C	Not in jurisdiction (other)	0
D	Eligible for investigation	16
	<b>Total</b>	<b>72</b>

#### Group A

These complaints related to a range of matters, though four were about water utility companies. As noted in the main text this was a significant reduction from the previous year. One complaint related to the Boat Safety Scheme which, as an organisation jointly owned by British Waterways and the Environment Agency, is not within my jurisdiction.

#### Group B

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

**Case example**

I was contacted several times by the elderly owner of a house adjacent to a canal, who was experiencing serious problems with water leaking into her cellar from the canal. British Waterways had installed a pump but had not been able to stop the leak. The complainant wished to move to more suitable accommodation but had been unable to sell the house because of the problem with the cellar. Having found it difficult from telephone conversations to understand how far the complainant had used the complaints procedure so far, I suggested she sent me copies of relevant correspondence. From that it appeared that she reached stage 2 of the complaints procedure in 2007, but had never received a final response (the Director involved had left). She had started the procedure again in 2008 and but a month after asking for her complaint to move to stage 2 had not received any reply (or an acknowledgement). I contacted British Waterways on her behalf and they made sure her complaint was quickly passed to a Director. When I last heard from her, the Director was about to visit and some further works were about to start on site. I left it to the complainant to contact me again if that did not result in matters being resolved to her satisfaction: I did not hear from her again so assume that they were.

**Group C**

There were no complaints which fell completely outside my jurisdiction even though they had completed British Waterways' own complaints procedure (though this is possible, for example with complaints about matters which occurred several years ago). However there were a few which would not have been in jurisdiction even if the complaints procedure had been completed: for example one related mainly to events in 1978.

## **Summaries of decisions on all eligible cases**

### **Index of investigated cases**

- Case No 288 – opportunity for complainant to put views on development of scheme for transport by water
- Case No 326 – replacement of missing lifebuoy
- Case No 335 – lack of prompt payment discount scheme for licences in Scotland
- Case No 336 - lack of public consultation before moorings tender trial
- Case No 337 – pricing of ‘end of garden’ mooring
- Case No 339 – refusal of request for ‘end of garden’ mooring
- Case No 342 – requirement to pay a mooring fee
- Case No 345 – adequacy of enforcement action against boaters without licences, mooring permits and/or abusing continuous cruising rules
- Case No 347 – Section 8 notice and removal of boat
- Case No 348 – car parking penalty
- Case No 352 – refusal of request to establish a towpath mooring
- Case No 353 – handling of licence payments and of complaints
- Case No 364 – setting of mooring fee for 2008-09 at BWML marina
- Case No 366 – action regarding debts of boating business
- Case No 375 – response to concerns from local residents about subsidence in urban towpath
- Case No 390 – decision about traffic light system on Gloucester and Sharpness Canal

## **Case No 288 – opportunity for complainant to put views on development of scheme for transport by water**

1. Mr A complained that in early 2005, when reviewing the outcome of a pilot project on a multimodal transport system, British Waterways did not give his company adequate opportunity to put their views or to have them properly taken into account.

2. I found that essentially the pilot project had been an arrangement between Mr A's company and a local Council. In principle there was nothing to stop Mr A developing work on the scheme further in a similar way if he and the Council chose and could find the necessary funding. Apparently that was not possible and Mr A made strenuous efforts to involve British Waterways, who then drafted an action plan, contacted several key stakeholders and sought funding to take matters forward. They also arranged a meeting of public sector stakeholders. Mr A was unhappy that he was not invited to that meeting but, after British Waterways agreed to fund the attendance of a consultant who had worked on a report on the pilot project, Mr A agreed that the action taken addressed his concerns. However he told me he did that on the understanding that no key decisions would be made at the meeting. He now believed the decision that he should not attend was rooted in antipathy towards him by some of British Waterways' staff. I explained to Mr A that even if there was ill-feeling towards him it would not in itself provide evidence that they had acted wrongly towards him or that he had suffered injustice as a result.

3. Whilst the meeting secured a commitment to take matters forward, the planned way ahead did not identify any specific role for Mr A's company and involved aspects he felt were doomed to failure. I could understand why Mr A was disappointed, given the efforts he had put into the pilot project, but that did not mean that what had happened was wrong or unfair.

4. I did find evidence that British Waterways had not been entirely frank with Mr A about all the reasons he was not invited to the meeting. However someone attending the meeting from another public body confirmed British Waterways' account to me that they had not been the only organisation with doubts about inviting Mr A. I noted that the parties involved were perfectly entitled to meet without Mr A and that he had been free to have direct contact with all the key decision-making bodies to express his own views (and that Mr A had had such contacts).

5. I did not see any evidence to suggest that Mr A or his company had any contractual rights to continue developing the scheme which British Waterways needed to observe. If Mr A had had any relevant legal rights he would have been able to enforce those in the Courts. The decision on how far to involve the company was a discretionary one.

6. The public sector organisations involved all had a primary responsibility to the public not to Mr A or his company. British Waterways argued that they acted as they did in the best interests of the public to drive matters forward. I could see that Mr A would argue that his company continuing to take the lead would have been in the public interest, but it was not within my remit or competence to make any assessment about whether that was correct. Therefore I could not judge whether British Waterways had had reasonable grounds for making the discretionary decisions they did about the extent to which they involved the company.

7. However, even more fundamentally, the more I considered this case the clearer it became that British Waterways really did not have the enormous power or influence in this matter which Mr A's complaint assumed. The most significant outstanding issue here was the development of a road vehicle. That was not a matter on which British Waterways could, should, or did take the lead: another public body was to fund the work. Evidence I obtained from that body showed that there had never been any question of them funding Mr A to take the scheme forward in the way he wished: they had to follow proper public sector procurement processes. That body plainly needed to take its own view about the scheme: it even, quite independently of British Waterways, commissioned its own consultants for advice before the meeting. The other body and the Council were the main decision makers not British Waterways. I could not see any basis for Mr A to hold British Waterways responsible for decisions those other bodies made. It was clear to me that no matter what attitude British Waterways had, or how the meeting was set up, Mr A would not, and indeed could not (because of requirements for public sector procurement), be funded to take matters ahead in the way he wished. So the outcome which Mr A complained about was not caused by any action or inaction of British Waterways. When there was no evidence of significant detriment to Mr A flowing from the actions of British Waterways about which he complained, I did not uphold the complaint.

### **Case No 326 – replacement of missing lifebuoy**

1. I accepted this complaint for consideration as British Waterways' complaints procedure had failed in its operation: when the complainant asked for the complaint to move to the second stage of the procedure, she received no response. When she chased matters up the reply she then received was not from a Director as it should have been and she was not advised of her right to contact me.

2. Ultimately I did not uphold the complaint, which was about a missing lifebuoy. British Waterways had already apologised for the fact that the complainant could not get a straight answer or prompt action when she first tried to draw the missing lifebuoy to their attention, and for their failure to respond to her request for the complaint to move to the second stage of the procedure. However in fact the lifebuoy had been replaced shortly after the initial complaint and British Waterways had said that if the lifebuoy was stolen

again, it would be replaced as soon as practical. It did not seem to me to be appropriate to insist that they gave a commitment to do that repeatedly as the complainant wished: if repeated thefts occurred, I could see that alternative provision might need to be considered. Therefore I could not see that an investigation by me would achieve significantly more than the complainant had already achieved herself.

### **Case No 335 – lack of prompt payment discount scheme for licences in Scotland**

1. Mr B complained when British Waterways told him he was not eligible for a prompt payment discount (which had been mentioned to him) on his boat licence fee because he lived in Scotland. I found that a mistake had been made in ever mentioning the discount, as that system does not apply in Scotland, but that it had not been maladministration that he was refused the discount. I also considered Mr B's view that the situation was unfair. However I noted that, particularly with increased devolution, different policies and entitlements quite often applied in public services in Scotland from England and Wales. So I could not see that the fact that a different approach was taken meant that the policy was unfair. In fact it seemed to me that Mr B would have been no better off under the English and Welsh system where, even on a disconnected waterway, he would have had to pay significantly more to licence a boat the length of his. I did not uphold the complaint.

### **Case No 336 – lack of public consultation before moorings tender trial**

1. I did not uphold a complaint made by an organisation which felt that British Waterways had been guilty of maladministration by not having a public stage of consultation about a trial inviting tenders for vacant moorings. The organisation based their view largely on two points: failure to comply with British Waterways' own published guidance and with the DEFRA framework document.

2. There seemed to have been little published by British Waterways at the time about when they would go out to full public consultation, and the decision in this particular case seems to have been discussed at Board level. The Board would generally be quite entitled to amend or waive internal policies.

3. Any obligation the framework imposed only required that consultation should occur in advance of decisions of significant interest 'so far as is practicable'. Nor did it specify the nature of the consultation. Whilst there was no full public consultation, there was significant discussion on the subject with user group representatives (including a representative of the organisation) before the trial went ahead. I felt that British Waterways could make a reasonable case that that constituted a form of consultation with waterways users, including the organisation concerned.

## **Case No 337 – pricing of ‘end of garden’ mooring**

1. Mr C complained about the way the price had been set for his ‘end of garden’ mooring for 2008-09. He felt it should be set at the same lower rate as moorings adjacent to land in a local park. However the procedure adopted by British Waterways was first to set prices for their own moorings and then to set prices for ‘end of garden’ moorings at half the rate of similar ones of their own (where they also provide land access and facilities). So the main issue was more whether Mr C’s mooring was comparable to the British Waterways moorings which had been used to set the price for the moorings in the park, rather the direct comparability of the two ‘end of garden’ moorings.

2. My investigation suggested that the formal assessment process for pricing end of garden moorings had not been followed at all: instead a 5% increase had simply been applied across most such moorings in the area. Nevertheless once Mr C challenged the pricing British Waterways sought to justify their choice of comparator site and both parties put forward various arguments based on the relative proximity of various sites to each other. The adopted procedure simply referred to comparison with a ‘basic comparable mooring in the same area’ and all the sites were within a few kilometres of each other. It therefore seemed to me that the crucial issue was not exactly how close the individual sites concerned were to each other - but their comparability. I felt that in considering Mr C’s challenge to the price set for his mooring, undue weight was placed by British Waterways on the relative distances between the sites involved (particularly the proximity of Mr C’s mooring to their chosen comparator), in a way which was out of line with the published procedure. I regarded that as maladministration.

3. However that was not to say that Mr C had necessarily been charged too much. There is no scientific formula which can be used to calculate a definitive price, and no two sites are directly comparable in every way. I had hoped that my explaining to British Waterways my concern about the undue weight placed on proximity might prompt them to review the situation and take a fresh look at the price. However that did not happen, and I had to take my own view. Overall it seemed to me that there probably was justification for the charge at Mr C’s mooring being based on one somewhat higher than that at the comparator used for the mooring site in the park (though not necessarily the comparator British Waterways preferred).

4. However, despite what British Waterways said about their choice of comparator, in 2008-09 Mr C had not in fact been asked to pay the half the rate at that site - as would normally be the case. A rise to bring the price of his mooring up to that of their chosen comparator site had been imposed in 2006, and was to be phased in over several years, but the planned phased increase in 2008-09 was not implemented. Instead the 5% increase applied elsewhere was also applied to Mr C’s site. This left the price significantly less

than half that at British Waterways' chosen comparator (though still higher than half the price for the comparator used for the site in the park). I had no explanation from British Waterways about why a phased approach was not implemented, but I suspected it was a mistake in Mr C's favour.

5. It seemed to me that even if procedures had been properly followed, with a reasonable choice of comparator and appropriate phasing of an increase, Mr C probably would not have been asked to pay less than he had been for 2008-09. Therefore I could not see that he had at present suffered any financial loss as a result of British Waterways' maladministration, and without evidence of injustice I could not uphold his complaint. Nevertheless I strongly urged British Waterways to consider carefully the issues raised by this complaint. Practice does need to be consistent with guidance and to avoid justified complaints it would be wise for them to ensure that their procedures were more closely followed than happened here. I also encouraged them to consider using comparisons between end of garden moorings as a useful cross check of the prices being set.

### **Case No 339 – refusal of request for 'end of garden' mooring**

1. Mr D complained about British Waterways' refusal to allow him to moor adjacent to a house he owned. British Waterways had pointed out that a particular plan for the canal included a clear presumption against the creation of moorings on the offside in rural areas, had said that mooring so close to a lock would be unsafe and that there was no clear documentary historical evidence of a mooring or wharf at the site. Mr D had argued that there had been a mooring at the site historically, allowing a mooring would be consistent with the plan's aims regarding conservation of the canal's history and links with the community, and that contrary to what British Waterways had said the site would be safe. He had emphasised his commitment to preserving the canal's heritage and interest in the possibility of using the site or his boat in various ways for the good of the community.

2. Overall it seemed to me that in the particular circumstances here the plan did not mean that British Waterways were bound to make a decision either way as to whether or not to allow Mr D to moor: they had to weigh up various factors and make a judgement. But I could not see that the judgement they did make, to refuse a mooring, resulted from maladministration or unfairness. I did not uphold the complaint.

### **Case No 342 – requirement to pay a mooring fee**

1. Ms E moored her boat adjacent to privately owned land, and paid the land-owners for doing so. She complained when British Waterways also expected her to pay a mooring fee to them, in addition to her licence fee and what she had paid the land-owner. British Waterways had tried to explain why they felt that was necessary, but she felt no one had provided a satisfactory explanation.

2. I provided a detailed explanation, trying to avoid jargon, both about why a licence was not sufficient to authorise long term mooring at one particular site and why British Waterways would be entitled to charge a mooring fee for use of the waterspace as well as the fee she had paid the landowner for land access. Having discussed matters with Ms E's adviser, I did not uphold the complaint about the requirement to pay the fee.

### **Case No 345 – adequacy of enforcement action against boaters without licences, mooring permits and/or abusing continuous cruising rules**

1. A residential boater complained that contrary to previous assurances given six months earlier under the complaints procedure, British Waterways were still not sufficiently addressing his concerns about some other local boats which were still either without licences, without mooring permits or abusing continuous cruising rules. I obtained information from British Waterways about actions they had been taking and were planning regarding the particular boats. What I saw did not suggest that there had been unreasonable delay in the necessarily rather complex processes needed to complete enforcement action against people concerned who were living on their boats. I told the complainant that I could not become involved in developing enforcement policy and procedures in quite the way he would like. I did not uphold his complaint, but encouraged him to complain again if he believed that current action was not being followed through appropriately.

### **Case No 347 – removal of boat following Section 8 notice**

1. Mr F's boat was removed from alongside a towpath by British Waterways and he complained that they had not given him adequate notice (under Section 8 of the British Waterways Act 1983) before doing so. He said that, having bought the boat, he was taking it nearer to his home to complete repairs when he encountered an unexpected stoppage. They said that they had sent a Section 8 notice to him at his home address, attached a copy of the notice to the boat's mooring rope (as the boat was swathed in tarpaulin) and left a message on his phone. He said he received no notice in the post and pointed out that a copy covering letter later sent to him by British Waterways had a computer date stamp showing it had been printed three weeks *after* the date on the notice. Mr F said that he had received no telephone message, and that there was no notice attached to his boat. He questioned whether photographs provided by British Waterways, showing a notice attached to the rope, had been manipulated.

2. It would have been perfectly adequate in law for British Waterways simply to have posted a letter to Mr F's home (and not to have phoned or attached a notice to the boat). However they were not in a position to show that they did that: they did not either seek proof of posting or send the letter by recorded delivery. Furthermore the only 'copy' letter they had was printed

three weeks after the date of the notice: the officer involved said he had probably printed it then because he was checking the paperwork and had not been able to find a hard copy of the original letter. I made enquiries regarding British Waterways' computer system to see if I might be able to ascertain when the letter had been drafted, but unfortunately that was not possible due to the timing of the computer back-up.

3. Because it was not possible to prove the case regarding the letter I also considered the issues of the phone call and the notice on the boat. Although Mr F's telephone provider had initially told him no such call had been made from British Waterways to his number, later they said that one had been but it had been diverted to another number - which I found to be unobtainable. The length of the call was consistent with a short message being left on a voicemail system. If Mr F did not receive such a message, that was not the fault of British Waterways.

4. I did not share Mr F's concerns about the photographs. They showed a notice of some sort fixed to the mooring rope, and I could not see that it would have been anything other than the Section 8 notice. However from the photos it appeared that, at some point between the notice being left and the boat being removed, the mooring stake came out of the ground and it, part of the mooring rope and the notice were pulled into the canal. Given the way the boat was straining on the rope in the first photo, that was a foreseeable possibility: I was not convinced that the mooring rope had been the wisest place to leave the notice. It seemed quite possible that Mr F could have visited the boat, as he said he did at the relevant time, and not seen the notice.

5. In sum, it was possible that the letter was sent when British Waterways said and Mr F received it (and possibly also saw the notice before it fell into the canal and that he received the phone message) but chose to ignore the situation. It was also possible that Mr F did not receive the letter, the notice had fallen into the canal before he visited the boat and he did not receive the phone message because of some problem with the voicemail. Failure to receive the letter could have been caused by a postal failure (not British Waterways' fault), or because it was written but not properly addressed or posted, or because it was not written until later (in either of those cases British Waterways' fault). Given the potential significance of the removal of a boat, British Waterways' systems for recording the giving of notice were inadequate: I was pleased to see that during the course of their own investigation of the complaint they had recognised the need for improvements.

6. Unfortunately I could not see that any further enquiries had a significant chance of settling matters. In the circumstances and in view of the fact that British Waterways' procedures had not been adequate, I proposed a negotiated settlement, but British Waterways were unwilling to enter such negotiations. They raised further legal arguments about the

evidence required to prove that notice had been properly served and offered to obtain an affidavit about the letter. However I felt that such an approach would be more appropriate for a Court case than an Ombudsman's investigation. Mr F had also indicated at various times that he was considering Court action. There was a risk that a particularly finely balanced decision would be unfair to either party - and binding on British Waterways but not Mr F. Increasingly legal technicalities were being raised as was the question of evidence being given on oath. In all those circumstances I felt that matters would be better dealt with by the Courts. I decided therefore that not making any finding on this complaint was the appropriate approach for me to take. Both parties had made it clear to me that they believed they had a case which they would win in a Court: in all the circumstances I decided that that would be the appropriate route for them to pursue their arguments further. I left it to them to do that.

### **Case No 348 – car parking penalty**

1. I accepted this complaint for consideration on the basis that the complaints procedure had failed in its operation: it took over six months and at least three contacts with British Waterways before the complainant obtained any substantive response to his concern and even then the matter had not been registered as a formal complaint.
2. The complainant was issued with a £80 parking penalty notice by a company working for British Waterways, when he visited British Waterways' premises to enquire about a forthcoming waterways event. He paid the penalty but complained about the adequacy of the signage, the ticket apparently being issued for a one minute stay, the approach taken by the company and the accuracy of the one response he eventually received about his concerns.
3. Following my intervention British Waterways apologised, agreed to address concerns about the signage and the contractors, and paid the complainant £100 (an £80 refund and compensation of £20). The complainant was satisfied and I regarded the complaint as having been resolved.

### **Case No 352 – refusal of request to establish a towpath mooring**

1. Mr G wished to establish a long term mooring along a towpath running between his garden and the canal. In 2002 British Waterways had agreed that he could set up such a mooring, but he did not do so straight away and in 2004 (when he purchased a boat) they declined to allow a mooring. He moored elsewhere, but in 2007 asked again about a towpath mooring and they declined again. He then complained saying that they should honour the 2002 decision and that a policy quoted did not apply to his situation.
2. Without evidence that Mr G had complained within 12 months about the 2004 decision I was unable to consider that. Looking at the 2007 decision,

I could not see that I could expect British Waterways to keep an offer of that sort open for five years. Any landowner offering to rent out land could not be expected to keep an offer open for so long: a great deal could change during that period. In this case in the intervening period various policies had been developed about new moorings. The 'Offline and online long term moorings' policy quoted by British Waterways did seem to me to be relevant to Mr G's situation. The policy was explicit that the exception to the general presumption against new online moorings applied only to end of garden moorings on the offside: not to a towpath mooring such as Mr G was requesting. I did not uphold the complaint.

### **Case No 353 – handling of licence payments and of complaints**

1. Between 2004 and 2007 Mr and Mrs H experienced various significant difficulties with the way British Waterways handled their direct debit payments for their boat licence. Despite at times this having resulted in them overpaying, in the summer of 2007 British Waterways wrongly took double the expected monthly payment from Mrs H's bank account. This sent the account into overdraft, resulted in snowballing bank charges and affected their credit status. When Mr H complained he received an apology and an offer of a refund of the initial charges. But Mr H did not feel the response was adequate given the fact that charges were now ongoing, because of the enormous stress which had been caused, and because no attempt seemed to have been made to ascertain how the problem arose and prevent any repetition. He continued corresponding about this and a small amount of further compensation was offered but he remained dissatisfied. His concerns were never put into the second stage of the complaints procedure and his last letters to British Waterways in December 2007 and April 2008 received no reply.

2. I agreed to accept the complaint for consideration on the basis that the complaints procedure had failed in its operation and contacted British Waterways on Mr and Mrs H's behalf. I encouraged British Waterways to try to resolve the complaint in advance of a detailed investigation by me.

3. A Director looked into matters and sent Mr and Mrs H a profuse apology for what he described as the 'appalling' way they had been treated. He arranged for them to have their annual licence free for two years, paid a substantial sum in compensation for distress and inconvenience and offered to intercede with the bank to help ensure they were put back in the same position they had been before British Waterways caused them problems. He said that they were taking firms steps to make sure a similar thing did not happen again. Mr and Mrs H were satisfied with that outcome and I was pleased to record the complaint as successfully resolved.

### **Case No 364 – setting of mooring fee for 2008-09 at BWML marina**

1. Mr J lived on his narrowboat boat in a BWML marina and complained that they had not properly applied their own policies or taken account of the facilities and services provided there when setting a price for 2008-09. The policy referred to catchment areas for comparators being within a 20 or 40 mile radius (though allowed for adjustments if the local market was different). BWML had used comparators only within the same town and Mr J felt another cheaper BWML marina less than 30 miles away should have been used. Until a late stage in the investigation no real explanation for the choice of catchment area was given, and I questioned why comparators were used which seemed to cater almost entirely for cruisers rather than residential narrowboats. However taking a wider catchment area would not just bring into the equation the cheaper BWML marina mentioned by Mr J but also other more expensive residential mooring sites.

2. Overall the prices I considered relevant clustered around the price set at Mr J's marina, and it did not appear on balance that I could conclude that Mr J had been asked to pay significantly more than he should have done because of failings by BWML. After I issued a draft report, Mr J informed me he was moving to another cheaper marina in the area and did not comment on the report. I could not see that a worthwhile outcome would be achieved by my taking matters further and I ended my involvement.

### **Case No 366 – action regarding debts of boating business**

1. Mr K ran a boating business. In 2007 British Waterways began Court proceedings to recover a substantial sum owed in fees, and some money was paid but no payment plan was agreed. In early 2008 British Waterways terminated arrangements for Mr K to trade on the canal and subsequently removed his boats using Section 8 of the British Waterways Act 1983.

2. I explained to Mr K that I had no power to consider some aspects which had already been considered in the Courts, but agreed to consider his concern that British Waterways had wrongly failed to recognise that allowing him to trade longer would have enabled him to repay the debts, which he said had occurred simply because of the particularly difficult summer of 2007. My enquiries showed that he had been struggling to keep up with payments since late 2004. I could understand why British Waterways would have felt that the problem was not simply the summer of 2007 and wanted written evidence (such as a business plan) that the business was now operating on a sound basis, and that Mr K would be able to pay off existing debts and keep up with payments in future. It appeared that Mr K had not provided any such plan when asked. In the circumstances, whilst I could see how committed Mr K had been to boating and how stressful things had been for him, I could not see that I could criticise British Waterways for deciding ultimately that they could not continue to extend credit to him or to allow him to continue operating.

### **Case No 375 – response to concerns from local residents about subsidence in urban towpath**

1. Mr L lives in an inner-city area and is involved with local community groups. He complained about the response by British Waterways to concerns he had expressed on behalf of residents about subsidence on a towpath (which was also a public footpath), and arrangements to make it safe and repair it. He had already been given an apology for various problems and a delay in dealing with his complaint. More works (to make a temporary repair) had been promised imminently and local staff had been recommended to work notify local groups about all future relevant works.

2. I passed on to British Waterways Mr L's concern that liaison needed to be directly with groups not just through a Council employee. I encouraged Mr L to take up an offer of a meeting with a senior local waterways manager, which Mr L found fruitful. Arrangements were made for ongoing liaison directly between British Waterways and the community groups. I did not think I could achieve more by taking the complaint further. Mr L was content for me to regard the complaint as having been resolved.

### **Case No 390 – decision about traffic light system on Gloucester and Sharpness Canal**

1. Mrs N complained about various aspects of the decision taken by British Waterways in late 2007 to cease using traffic lights to indicate right of way at bridges on the canal. In June 2008, when a Director considered her complaint, British Waterways had obtained a health and safety report but decided to continue with the new system pending a review later that year. Mrs N complained to me in November 2008 when the outcome of that review was uncertain, but she wished to ensure that she was not outside the six month time limit to approach me. I told British Waterways that I had accepted the complaint for consideration, but suggested to Mrs N that I should await the outcome of their further consideration of the matter before any detailed investigation. In February 2009 British Waterways announced that they had decided to revert to using the lights. Mrs N was then content for me to regard her complaint as having been resolved.



## Annex C

### How to contact the Waterways Ombudsman

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

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

Waterways Ombudsman  
PO Box 35  
York  
Y060 6WW

Telephone: 01347-879075

Email: [enquiries@waterways-ombudsman.org](mailto:enquiries@waterways-ombudsman.org)

More information about the Waterways Ombudsman Scheme and how to complain can be found on the Scheme's website at [www.waterways-ombudsman.org](http://www.waterways-ombudsman.org).