



THE WATERWAYS
OMBUDSMAN



Annual Reports of
The Waterways Ombudsman Committee
and
The Waterways Ombudsman
for 2014-15



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ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN COMMITTEE COVERING THE PERIOD 2014-15

Chair's Report

Welcome to the 2014-15 Annual Report of the Waterways Ombudsman Committee.

Following an open recruitment campaign in the winter of 2014 three new independent members of the Committee were appointed (including me). As a result the new Waterways Ombudsman Committee came into effect in February 2015 and now consists of three independent members plus two representatives of the Canal & River Trust.

I was elected Chair in March 2015 by members of the new Committee.

Independence

As a member of the Ombudsman Association and a long standing Ombudsman Scheme it is essential that the Committee is an independent body. The rules of the Committee require there to be a majority of independent members and for the Chair of the Committee (who must be independent) to have a casting vote in the event of a deadlock.

The Committee's role

Our role is to appoint the Ombudsman and to make sure that there exists an effective scheme for complainants to use.

As with all Ombudsman schemes the Committee has no involvement in the day to day work of the Waterways Ombudsman and in particular does not get involved in the decisions which he takes on individual complaints. We do not act as an appeals body.

Accountability and transparency

As a new Committee we do recognise the need for increased accountability and transparency. Over the next year we want to work with interested parties to get better feedback on the work of the Ombudsman Scheme.

The revamped Waterways Ombudsman website is part of this, as is the library of case summaries which the Ombudsman will be placing on the website and which will be kept up to date as cases are completed. This will give more detail about the sorts of cases the Ombudsman deals with and the decisions he reaches.

We will be working with the Ombudsman to get more feedback from people who actually use the Scheme as to how the service might be improved and during the year the Ombudsman and members of the Committee will be meeting with organisations representing users to discuss the work of the Scheme and how it might be developed further.

The EU Alternative Dispute Resolution Directive

This came into force in July 2015 and requires most Ombudsman schemes to obtain certification from a “competent authority”. For us, the competent authority is the Trading Standards Institute and certification will mean that we meet the requirement of the Directive and the related UK regulations.

We obtained certification on 20 August 2015 and full details are available on the website.

This report covers the year from 1 April 2014 to 31 March 2015. Approved minutes of Committee meetings are available on the Waterways Ombudsman Scheme’s website at www.waterways-ombudsman.org.

In addition to the appointment of the Ombudsman, the other main roles of the Committee are:

- 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.

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

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

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

Steve Harriott



Members of the Ombudsman Committee on 31 March 2015

Chair

Steve Harriott is an independent member and works as 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 c15,000 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 as an independent member on the Boards of Chatham Maritime Trust (as Vice Chair) and of Boston Mayflower Housing Association in Lincolnshire (as Chair) . He writes widely on tenancy deposit issues and is keen to see the wider use of alternative dispute resolution to resolve consumer disputes.

Other Independent Members

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. Other roles have included being The Independent Member of the Public Diplomacy Committee at The Foreign and Commonwealth Office and Independent Non-Executive Director of the East of England Tourist Board. 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

Tom Franklin is a Trustee of the Canal and River Trust and works as the chief executive of Think Global, a membership charity that works to educate and engage people about global issues such as climate change and sustainability. He is currently a member of the Independent Panel on the future direction of forestry and woodland policy in England. He was previously chief executive of the Ramblers, Britain's walking charity. He has been a local authority councillor for twelve years, including a period as council leader, and was an expert adviser on 'Better Public Spaces' to the Beacon Council Awards Scheme. He was also chief executive of Living Streets, a charity promoting better streets and public spaces for pedestrians.

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.

ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN FOR 2014-15

Introduction

1. This is my second annual report as Waterways Ombudsman, covering the period from 1 April 2014 to 31 March 2015. My first report covered the two year period from 1 April 2012 to 31 March 2014.

2. This report marks a break from tradition in the way that I present case summaries. Rather than include the summaries for all investigated cases as an annex to the report, I have decided to put the summaries only onto my website. This has a number of benefits; apart from reducing the length of the report it means that anybody searching case summaries can do so more easily, and those who are looking for a particular case summary, or are looking for cases relating to particular issues, do not need to search through a number of annual reports but can instead do a simple website search or browse the summaries. All references in this report to specific cases include links to the summary on the website.

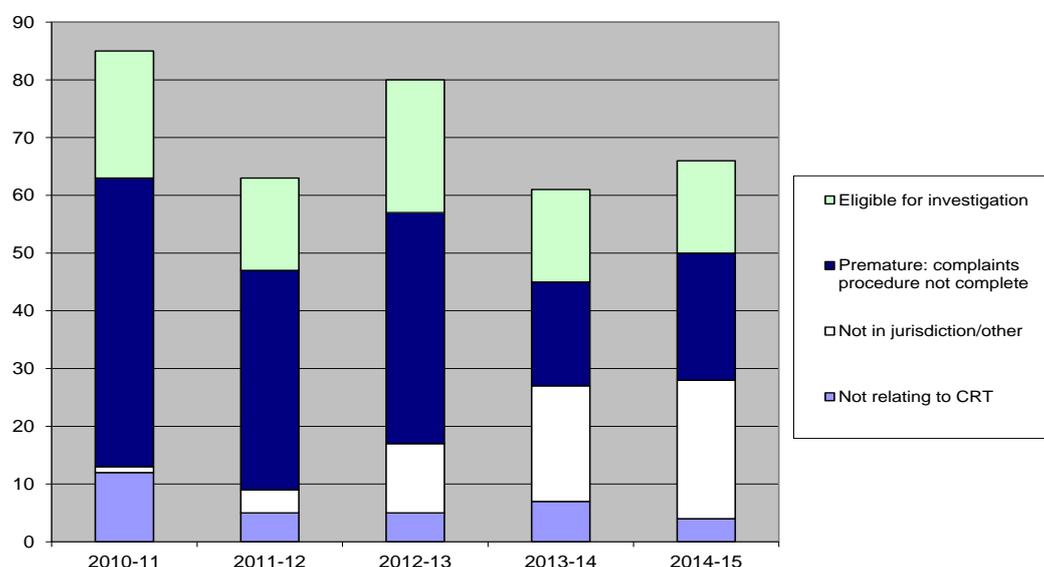
3. I aim to build up the library of case summaries on the website, both by adding some historic cases and by adding case summaries for future investigations shortly after they are completed rather than when the annual report is published.

Casework - workload

4. The number of enquiries this year has increased slightly from 61 to 66. An enquiry is any kind of approach, regardless of whether it falls within my terms of reference, or whether I open an investigation. However, while there were seven enquiries last year which were not about the Canal & River Trust ("the Trust"), this year there were four, meaning that the number of enquiries about the Trust has increased from 54 to 62.

5. I have categorised the enquiries under four headings as shown in the table below. It is important to note that the number of enquiries eligible for investigation is not necessarily the same as the number of investigations I have opened in the year, because where I receive an enquiry late in the year I may not open it until after the year has ended. The table below breaks down the enquiries according to the main description. There were 22 enquiries which I closed because the Trust's internal complaints procedure had not been completed, and where the complainants did not later come back to me.

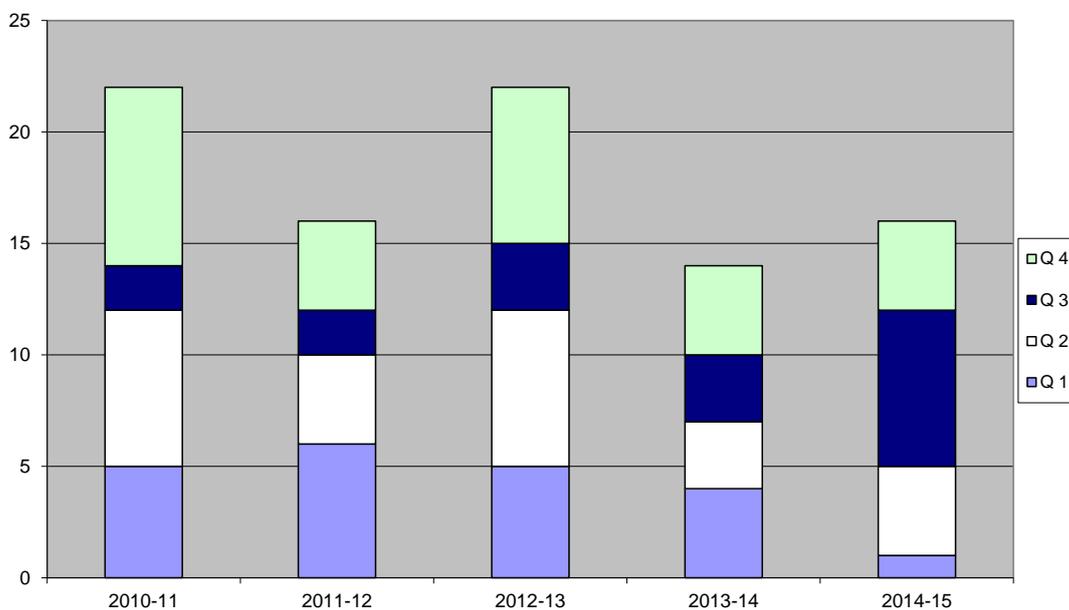
Enquiries work



6. Those complaints which I have marked as “not in jurisdiction/other” include a range of outcomes. Of the 24, five were resolved either by complainant or Trust action, seven were about Trust policy issues rather than maladministration, four were information only and three were general enquiries or an information request. In three cases I closed the enquiry on the basis that there was no worthwhile outcome, although in doing so I provided detailed explanations of why that was my view. In these cases the complaint was primarily about policy or legal issues.

7. I opened 16 new investigations during the year, which was slightly up on last year’s total of 14. The table below shows the breakdown by quarter for the past five years. The first four years do appear to show some seasonality, in particular that the third quarter from October to December seems quieter, although this year seems to have been an exception. Given that the numbers are so low it is unlikely that any strong statistical inferences can be drawn.

New cases to 2014-15



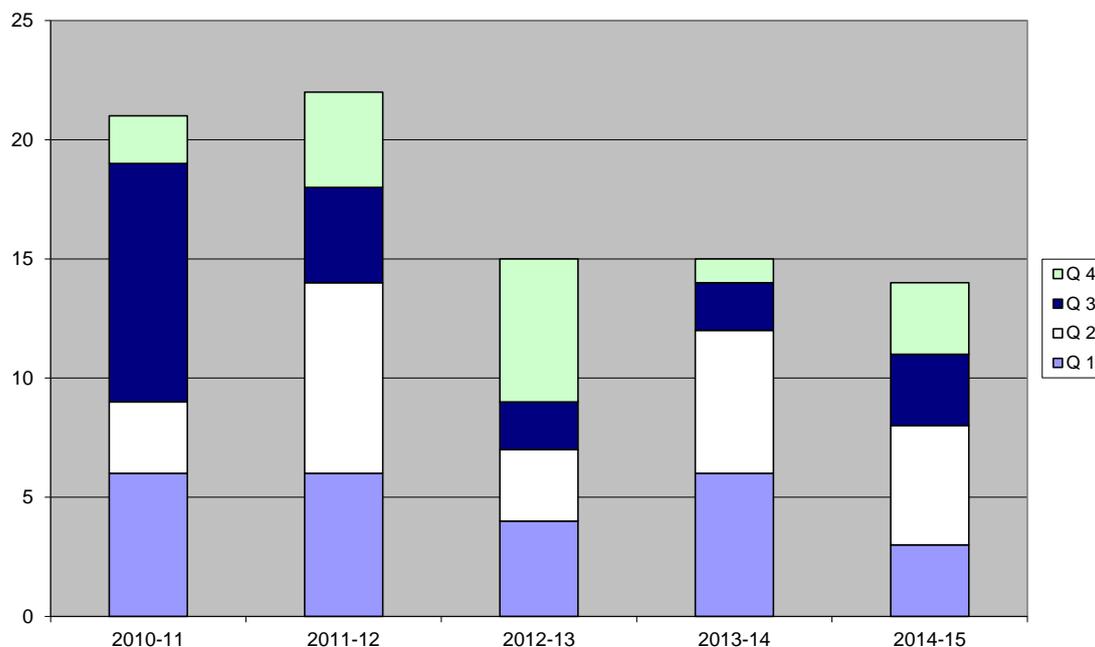
8. The number of complaints entering the first level of the Trust’s complaints process has been on a significantly declining trend for several years. In 2005-06 there were 1,001 such complaints, with 99 entering the second level and 29 Ombudsman investigations. This year, nearly 10 years later, the Trust handled 185 complaints at the first level of the internal complaints process, which is down from 232 the previous year, while it handled 42 at the second level, and I have opened 16 investigations. In broad terms, over this time period the number of first level complaints has dropped to about a fifth, while the numbers entering the second level and then going to be investigated by the Ombudsman has dropped to less than half.

9. This year, fewer than a quarter of complainants took their complaints to the second stage, and fewer than half of those that completed the second stage then brought their complaints to me.

10. I completed 14 investigations in the year, and discontinued one when the complainant withdrew his complaint. Of those 14 investigations I upheld two, partly upheld six and did not uphold the other six. Of the upheld complaints both were accepted by the complainant.

One involved a monetary award, while the other made recommendations about improvements to CRT processes. Of the six I partly upheld, four involved monetary awards and were accepted. In one of the other two I made no recommendations, while in the other I made a non-financial recommendation but it was not accepted. The Trust agreed to act upon all the recommendations I made in my reports where they were accepted by the complainants.

Investigations completed quarterly



11. All but one of the completed cases took less than six months to reach a decision, and eight took less than three months. Of the six cases that took longer than three months, five were complex.

12. Under the new ADR landscape from 9 July 2015 I will be required to complete cases within 90 days except where they are complex. I have used the date on which I accepted the complaint for investigation as the start date, and the date on which I issue the final report (having already issued a draft report for comments by the parties) as the end date. The average time to complete all 14 investigations was 97 days, which is a small increase on last year's figure of 91. If I exclude the five complex cases which took over three months, the average time to complete the remaining nine was 67 days.

Time to completion	2010-11	2011-12	2012-13	2013-14	2014-15
<3 months	15 (71%)	15 (68%)	10 (67%)	10 (67%)	8 (57%)
3-6 months	4 (19%)	6 (27%)	2 (13%)	3 (20%)	5 (36%)
6-9 months	1 (5%)	0	2 (13%)	2 (13%)	1 (7%)
9-12 months	1 (5%)	0	1 (7%)	0	0
>1yr	0	1 (5%)	0	0	0

13. There were seven ongoing investigations as of 31 March 2015. I had opened two of them in October 2014 but immediately suspended them while the Trust carried out its internal investigation, which I wanted to see before concluding my investigations. I opened one investigation in November 2014, which was a complex case, and I opened the other four between January and March 2015.

14. As has been the case in previous years, the completed investigations spanned a range of complaints, and there was very little similarity between them. Nine were from boaters, of which one was about the continuous cruising rules ([case 770](#)). As I have said in earlier complaints about this issue, it is not for me to interpret the law but to decide whether the Trust has acted within its own rules, and in this case I concluded that it had.

15. The other investigations included a dispute about the extension on a lease of a property where British Waterways used to own the freehold ([case 764](#)), the costs of refloating a boat which had sunk in a marina ([case 772](#)), the Trust's role as a Statutory Consultee in planning applications ([case 759](#)), flood risks ([case 792](#)), surface water drainage charges ([case 797](#)) and provision of facilities for a disable boater ([case 831](#)). Annex B includes a list of all investigated cases, together with links to the summaries on my website.

Service standards

16. 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 completed within 6 months of acceptance.

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

- the first standard has been achieved in 100% of cases;
- the second standard has been achieved in 89% of cases;
- the third standard has been achieved in 93% of completed cases.

Contacts with stakeholders

18. During the year I have:

- visited the Crick Boat Show;
- attended the Trust's Annual Report launch; and
- attended a meeting of the Manchester and Pennine Waterways Partnership.

19. 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

20. The number as well as the proportion of complaints that I receive, where the complainant has not completed the Trust's internal complaints process, has increased slightly this year, although given that the absolute numbers are still small the increase is probably not statistically significant. Any significant trend could only be viewed over a longer period.

21. I have occasionally seen cases where I thought that the Trust should have recognised from protracted correspondence that the issue would be better handled by directing the complainant to the ICP, but this year there was only one enquiry where that might have been the case.

22. One of the main reasons why complainants come to me prematurely is because the issue is urgent. For example, a lady who had submitted a bid for a mooring which was being auctioned changed her mind, found that she could not withdraw, and contacted me to ask whether I could do anything. The ICP process would not have been completed before the auction ended, but I explained that I could not do anything unless she had followed the ICP. In another case the complainant had started the ICP but he said that he was worried about his personal safety after suffering a homophobic attack. In that case a small intervention on my part led to a successful resolution for the complainant without the need for my further involvement.

Complaint issues

23. As before, the range of enquiries has been extremely diverse, with very few common themes. Of the 62 enquiries I received which related to the Trust, one topic gave rise to four enquiries, about continuous cruising, while the other led to three, about surface water drainage charges.

24. For continuous cruising, in one case the complainant had not completed the Trust's ICP. In a second case I was copied in on an email but was not asked to intervene. In a third case the enquirer had agreed a resolution with the Trust but wanted me to look at the law on continuous cruising, which I explained that my remit did not cover. In the fourth case the enquirer disagreed with the delineation of mooring zones on the Kennet & Avon Canal, which was a matter of policy where I could not intervene. One of the investigations I completed was about continuous cruising requirements, but this arose from an enquiry brought to me in 2013-14.

25. For surface water drainage charges, the cases were about properties where drainage is into a Trust waterways rather than the local water company's infrastructure. In one case I opened an investigation ([case 797](#)) but explained to the complainant that the Trust was not a regulated provider of such services, and that the charges were a matter of Trust pricing policy in which I could not intervene.

26. The other enquiries covered a range of topics from a flooded garden by the Lancaster Canal, maintenance of a pond in the Lea Valley, end of garden moorings fees, to speeding cyclists on towpaths.

27. The 14 investigations I completed in the year (listed in Annex B) covered 14 subjects.

The year ahead

28. I said in my last annual report that during 2014-15 I intended to review the appropriateness and fitness for purpose of my website. As of 31 March 2015 work on a new website was well under way, which would provide more information and better compatibility with modern devices such as mobile phones and tablet computers. The work has now been completed and the new website was up and running in June 2015.

29. In his report the Chair referred to the EU Alternative Dispute Resolution Directive. The Directive was transposed into UK law via the ADR Regulations, which came into force on 9 July 2015. There are a number of ways this will affect the Waterways Ombudsman scheme. The scheme will need to go through an annual approval process to ensure that it continues to meet the approval criteria. Ensuring compliance with the Regulations has led to some clarification of the rules for consideration of complaints; in particular there is now a clearer explanation in the scheme rules about the jurisdictional boundaries and the reasons why I can refuse to consider a complaint.

30. The changes remove some of the reasons under which I could previously refuse to consider complaints, such as where it appeared that no worthwhile outcome could be achieved or that the complaint did not raise any substantial issues. I can also now accept complaints where the complaint has failed to complain to the Trust or relevant body within three years of the complaint issue first arising, and can accept complaints up to 12 months after the Trust's internal complaints procedure has been completed, rather than six months. The only change which in effect narrows the gateway to investigation is where dealing with a complaint would seriously impair the effective operation of the scheme, but I have not so far seen a case where I would have applied this rule.

Conclusion

31. This has been my second full year as the Waterways Ombudsman. Last year I said that the number of enquiries had dropped significantly, but this year there has been a slight rise. As I said earlier, given the small numbers of enquiries and investigations I handle, any changes in numbers would have to be viewed in the context of a longer time series.

32. Although the number of complaints being handled by the Trust at the first level of its complaints process does show a long term decline, the numbers coming to the Ombudsman are more consistent. There will inevitably continue to be complaints where the two parties cannot agree, but this year I have upheld, or partly upheld, the complaints in eight out of 14 investigations.

Andrew Walker
[Waterways Ombudsman](#)



Detailed data on enquiries – 2014-15

Group		
A	Eligible for investigation	16
B	Premature: internal complaints procedure not complete	22
C	Not in jurisdiction/other	24
D	Not relating to the Canal & River Trust	4
	Total	66

Group A

Although 16 of the enquiries received during the year were eligible for investigation, the number of investigations completed was 14. Five of those completed investigations related to enquiries first received in the previous year, while seven were not completed during the year. The summaries in Annex B relate to the 14 investigations which were completed during the year.

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 have been 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. This group does not include any complainants who, having first come to me prematurely, have subsequently returned to me and where I have opened an investigation.

Group C

This group includes ten cases which in my view were 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

Of these complaints three related to waterways not owned by the Trust, and the fourth was about damage to a boat caused by another boat.

Eligible cases for investigations which were completed during the year 2014-15

For previous annual reports anonymised summaries of all concluded investigations were included in an annex to the report. From this year summaries will be published on the website and not in the report, but the reports will still include a list of completed cases. Future summaries will be published on the website shortly after the investigation is completed. The list below provides a headline description of the complaint. Please click on a case number to be redirected to the summary on the website.

List of investigated cases

[Case No 737](#) – failure of the Trust to deal effectively with leaks from canal

[Case No 759](#) – provision of outdated information for marina planning application

[Case No 764](#) – negotiations for extension of property lease

[Case No 766](#) – inappropriate issue of an Enforcement Notice

[Case No 770](#) – Section 8 notice and continuous cruising requirements

[Case No 772](#) – compensation for refloating boat

[Case No 779](#) – safety and other issues at mooring

[Case No 792](#) – canal infrastructure, culverts and flood risk

[Case No 797](#) – surface water drainage charges

[Case No 801](#) – Foulridge tunnel incident and boat damage

[Case No 806](#) – bollard electricity supply meter accuracy

[Case No 818](#) – Ribble Link closure

[Case No 831](#) – treatment of a disabled boater

[Case No 832](#) – overstay at visitor moorings and child safety issues

