



THE WATERWAYS  
**OMBUDSMAN**



Annual Reports of

The Waterways Ombudsman Committee

and

The Waterways Ombudsman

for 2016-17



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## **ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN COMMITTEE COVERING THE PERIOD 2016-17**

### **Chair's Report**

The Committee was first established in early 2005 to oversee the operation of the Waterways Ombudsman scheme and the independence and accessibility of the Ombudsman. The Committee has five members, with the provision in the rules for a sixth. Of the five members, three (including the current chairman) are independent and two are appointed by the Canal & River Trust. Full details of the membership of the Committee are given below.

The main roles of the Committee are:

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

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

The Committee members at the 31 March 2017 are:

#### **Independent Members**

Steve Harriott [Chair of the Committee]  
Kevin Fitzgerald  
Jenny Murley

#### **Trust representatives**

Gill Eastwood  
Janet Hogben

[Jackie Lewis and Tom Franklin stood down from the Committee during the year.]

The Committee met three times in the year.

## **Members of the Ombudsman Committee as at 31 March 2017**

### 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 protecting deposits it also provides free alternative dispute resolution services in relation to tenancy deposit disputes and deals with c. 16,000 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 Gravesend Churches Housing Association in Kent (as Chair designate). 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 currently works as the Compliance Manager to an FCA regulated Firm which manages renewable energy infrastructure funds. Jenny has previously worked for the Consumers' Association, the Investment Management Regulatory Organisation (IMRO), and the Insurance Ombudsman Bureau.

### Members appointed by the Canal & River Trust

**Gill Eastwood** has a PhD from Liverpool University, and a BA in French and Linguistics from the University of Birmingham. She currently works as the Head of Governance, Audit & Risk and the Canal & River Trust. Previously Gill was the Assistant Director, Financial Management, Performance and Risk at Kirklees Council, and also a Director at the Audit Commission. Gill is a member of the Chartered Institute of Public Finance and Accountancy.

**Janet Hogben** was appointed as a Trustee Director of the Canal & River Trust in September 2016 and is a member of the Trust's Remuneration Committee. Janet is the chief people officer at EDF Energy, having previously worked at BP, where she held a variety of roles, and then at Seagram and at Diageo, leading on a number of global strategy and business specific HR positions.

### **Looking forward**

The Committee remains focussed on ensuring that an effective Ombudsman scheme is made available to those who use the services provided by the Canal & River Trust or any of its subsidiaries, or who may be affected by their activities. A focus of the coming year will be seeking to extend the work of the Ombudsman into other canals and waterways where the services of an independent Ombudsman would be helpful.

### **Independence**

The Waterways Ombudsman Scheme (the Scheme) is a member of the Ombudsman Association. It is a requirement of the Ombudsman Association that the Committee is independent. The rules of the Committee require there to be a majority of independent members and for the Chair (who must be an independent member) to have a casting vote in the event of a deadlock.

### **Accountability and transparency**

The Committee aims to ensure that the scheme is accountable and transparent to users of the Canal & River Trust and its subsidiaries. As such during the last 12 months the Chair and Ombudsman met with representatives of the Residential Boat Owners' Association. In addition the Committee has been in correspondence with a number of other canal operators to discuss the possible membership of the Ombudsman scheme.

The revamped Waterways Ombudsman website went live in May 2016 and includes a library of case summaries which give more detail about the sorts of cases the Ombudsman deals with and the decisions he reaches.

In 2016 the Committee worked with the Ombudsman to introduce a system of feedback from users of the scheme. This is now providing some valuable insights into how best we can improve the service going forward.

### **Assessing the effectiveness of the Scheme**

The Committee has a responsibility to ensure that the Scheme is effective, which it does by keeping under review:

- The Scheme website and its contents
- Compliance with the Scheme service standards
- Complainant satisfaction and feedback
- Quality of decision making
- Accountability
- Finances

A summary of the Committee's review is set out below together with its own review of a sample of cases which were looked at by the independent members.

The committee reviewed three cases selected at random by the Chair from the cases decided in 2016-17 and were satisfied that the decision letters were of the appropriate quality. In every case the Ombudsman had set out in detail the complaint, the investigations he had carried out, his final decision and the reasoning behind this. In all cases the language used was clear.

The Committee however identified one area where the process might be improved, which was that in some cases the key findings and conclusions formed part of a larger general section on the analysis of the complaint, and did not stand out, so in future they should be clearly highlighted with their own heading or in a separate section.

### Assessing the effectiveness of the Waterways Ombudsman scheme

Element	Standard to be met	How assessed	Assessment
<b>WEBSITE</b>	Provides key information to complainant about the scheme and how to complain	Review by Committee of the website content	Standard met. The website does provide information to complainant (under the Complaining tab) about the scheme and what they need to do if they wish to raise a complaint.
	Enables complainant to email complaints and evidence to Ombudsman	Review by Committee of the website content	Standard met. The website makes it clear how complaints may be submitted: "Complaints can be submitted by email, post or telephone."
	Enables complainants to raise complaints or submit evidence by post	Review by Committee of website	Standard met. The website makes it clear how complaints may be submitted "Complaints can be submitted by email, post or telephone".
<b>SERVICE STANDARDS</b>	Clear service standards for dealing with complaints	Review by Committee of the Standards document	Standard met. The service standards are published on the website.
	Acknowledgement of initial contact within a week (90% of cases)	KPI report to each Committee	Standard met. Achieved in 100% of cases.
	Investigations completed within 90 days of receiving complete complaint file (unless they are complex)	KPI report to each Committee	Standard met. Achieved in 100% of cases.
	CRT to report to Ombudsman within 20 working days of actions being taken in relation to recommendations made by Ombudsman	KPI report to each Committee	Achieved in four of the five cases where remedies were proposed and which were accepted by the complainants. The exception was case 916. Further details are in the Ombudsman's report.
<b>SATISFACTION</b>	High levels of satisfaction with process from complainants	Satisfaction reporting to each Committee	Standard met. Satisfaction reporting was in place during 2016-17 and results reported to each Committee meeting.
<b>DECISION MAKING</b>	High quality decision making on cases	Sample Review of casework by Committee members. and/or consultant on an annual basis	Standard met. Review satisfied that decision making was of high quality in cases reviewed.
	Well written responses demonstrating a quality redress process	Sample Review of casework by Committee members and/or consultant on an annual basis	Standard met. Review satisfied that responses were well written.
<b>ACCOUNTABILITY</b>	Annual Report published on website	Annual Report published.	Standard met.
	Digest of cases on website	Digest on website	Standard met.
	Meetings with key stakeholders to discuss approach	Reports to Committee	Further meetings to be diarised.

	Annual meeting between Ombudsman Committee Chair and the Chief Executive of CRT to discuss the Scheme	Reports to Committee	Contact between the Chair and CEO during the year.
<b>FINANCES</b>	Annual budget agreed in the light of casework levels	Reports to Committee	Standard met.
	Management accounts produced at regular intervals and reported to Committee	Reports to Committee	Standard met.

**Finances**

The Committee appoints the Ombudsman and the Committee is funded by the Canal & River Trust to meet the costs of this service. The total cost of the Ombudsman service in 2016-17 was £33,788.30 (2015-16 £40,910.29) (2014-15 £37,251.23). All expenditure is authorised for payment by the Chair. The higher costs in 2015-16 were due to the costs of the first application to the Chartered Trading Standards Institute to obtain the required certifications for the Scheme. Subsequent renewal costs were lower. The Ombudsman charges for his services on a time and materials basis and is not an employee of the Committee or the Canal & River Trust.

**The EU Alternative Dispute Resolution Directive**

This came into force in July 2015 and required most Ombudsman schemes to obtain certification from a “competent authority”. For us, the competent authority is the Chartered Trading Standards Institute and certification will mean that we meet the requirement of the Directive and the related UK Regulations. The Scheme obtained certification on 20 August 2015. The approval must be renewed on an annual basis, and certification following the 2016 approval process was confirmed on 9 February 2017.



Chair, Waterways Ombudsman Committee



# ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN COVERING THE PERIOD 2016-17

## Introduction

1. This is my fourth annual report as Waterways Ombudsman, covering the period from 1 April 2016 to 31 March 2017. I said last year that the complaint workload had not changed significantly from the previous year, but had again proved to be extremely varied, and this is again the case.
2. In terms of the impact of external events it has been a fairly quiet year, in contrast with the previous year which saw the coming into force of the ADR Regulations<sup>1</sup>. These Regulations require all ADR bodies to be approved by what is known as a Competent Authority. The approval process is an annual event, and the Waterways Ombudsman Scheme was this year again granted unconditional approval by its Competent Authority, the Chartered Trading Standards Institute.
3. I was originally appointed for a four year term from 1 November 2012. Under the Rules of the Scheme an incumbent Ombudsman may be appointed for one further term, of between two and five years. At its meeting in May 2016 the Committee decided to offer me a second term, of three years' duration, starting on 1 November 2016, which I accepted.

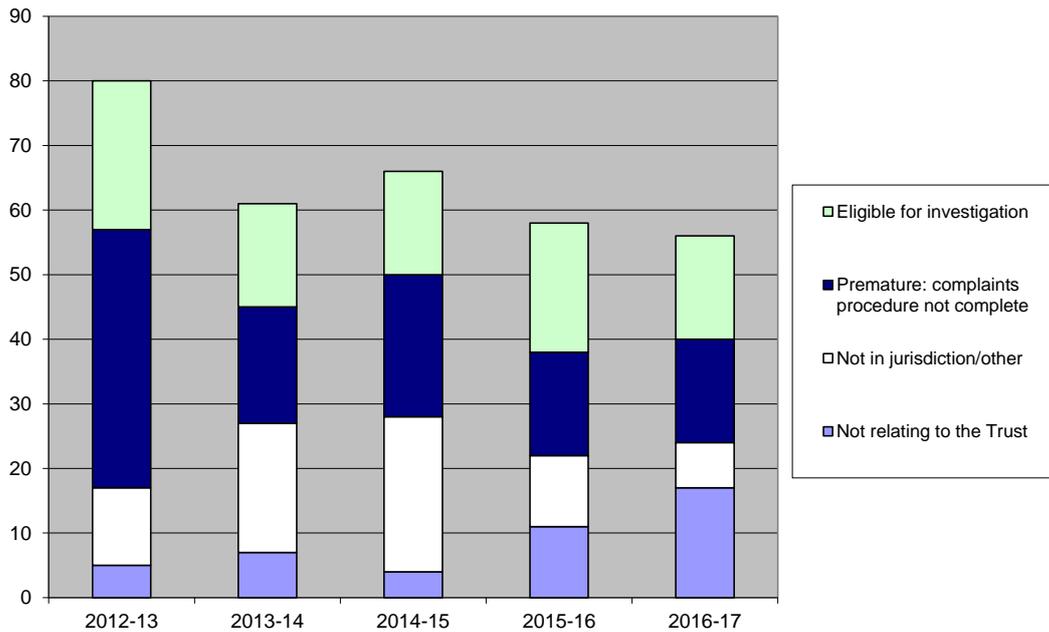
## Casework – enquiries

4. The number of enquiries this year has decreased from 58 to 56. An enquiry is any kind of approach, regardless of whether it falls within my terms of reference or whether, if it does, I open an investigation. I always receive some which are not about the Canal & River Trust ("the Trust"), and the number fluctuates quite markedly. In 2014-15 there were four enquiries which were not about the Trust, which increased to 11 in 2015-16. This year the number has increased again, to 17. 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.
5. There were 39 enquiries that were in some way about the Trust, a drop from last year's 47, although seven of last year's enquiries were about one issue so the number of distinct enquiries is broadly the same. The chart below shows the breakdown of all enquiries for the past five years.

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<sup>1</sup> The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

### New enquiries



The numbers for 2016-17 are set out in the table below:

A	Eligible for investigation	16
B	Premature: internal complaints procedure not complete	16
C	Not in jurisdiction/other	7
D	Not relating to the Trust	17
	<b>Total</b>	<b>56</b>

6. Last year I said that there were two points to note about the numbers of enquiries. The first was that there had been a drop of around a quarter in the enquiries which were in some way about the Trust, and the second was that the number not about the Trust had almost trebled (although the number was still fairly low). That trend has continued, although it is interesting to note that the number of complaints eligible for investigation has remained more or less constant for the past four years.

7. Of the 39 enquiries that were about the Trust, 16 were eligible for investigation. A further one, which I received at the end of the year, was likely to be eligible for investigation given that the complainant said she had completed the Trust's internal complaints process (ICP), but as of the end of this reporting year the complainant has still not submitted the details of her complaint so I could not be sure, and placed it in category C.

8. There were 16 enquiries relating to the Trust, which might potentially be in my jurisdiction but where the ICP had not been completed, and where by 31 March 2017 I had had no further contact from the person making the enquiry. I refer such complainants to the ICP, explaining that they can come back to me if they remain dissatisfied at the end of the process. 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.

9. I categorised seven enquiries as "not in jurisdiction/other". All were in some way related to Trust activities but may be unlikely to have led to an eligible complaint. Some were only

requests for information, or matters which should have been directed to the Trust and not to me.

10. Of the 17 enquiries which were not about the Trust, five were not about waterways at all. One enquirer explained that she had found my details by an Internet search using the term “Ombudsman” and that the Waterways Ombudsman Scheme was at the top of the page. This situation may have changed, as I have had only one non-waterways enquiry since September 2016.

11. The other 12 were about:

- Environment Agency waterways (2 enquiries)
- Avon Navigation Trust (2)
- Cotswold Canal Trust (1)
- private marina (2)
- the Boat Safety Scheme (2)
- boat-building/brokerage (1)
- River Canal Rescue Ltd (1)
- private dispute rather than with the Trust (1)

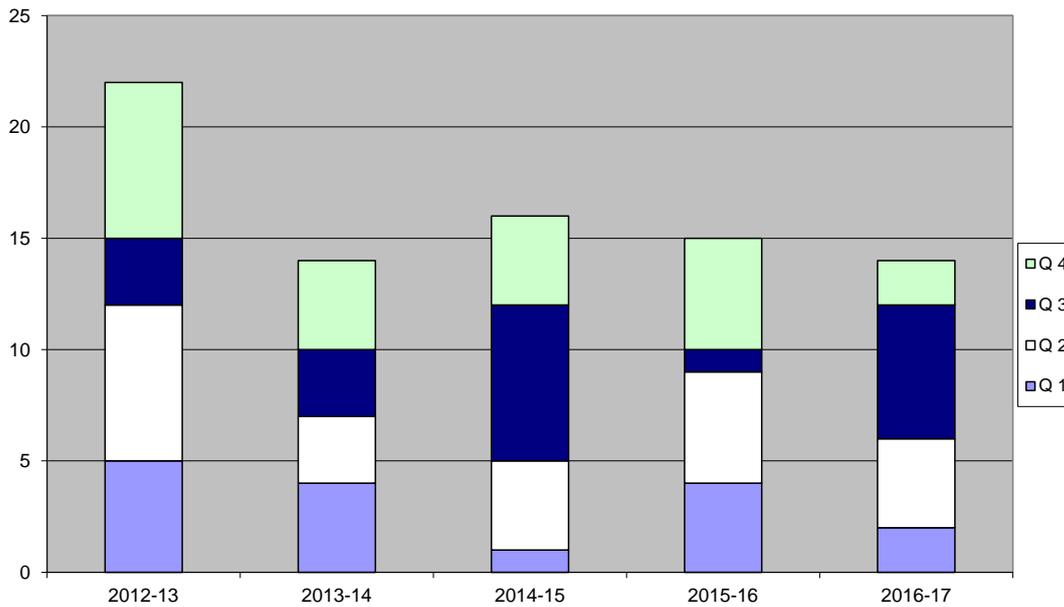
12. The Boat Safety Scheme is a public safety initiative owned by the Trust and the Environment Agency, but it is not a subsidiary of the Trust and is therefore outside my remit.

13. Because the numbers in each category are so small I cannot conclude that there is any lack of information about the contact details for those organisations. I said last year that to reduce the possibility of complainants coming to me following an Internet search I had added an explanation to the home page of my website explaining that I could not consider complaints about non-Trust waterways. I am still receiving non-Trust enquiries, which will probably be impossible to avoid, but the time taken in dealing with such enquiries is very low and has no adverse impact on work within my remit.

### **Casework – investigations**

14. I opened 14 new investigations during the year, compared with 15 in the previous year, and completed 17, compared with 17 in the previous year plus a further investigation which I closed because the complainant did not pursue it. There were four open at the start of the year, and one open at the end. The chart below shows the breakdown by quarter for the past five years for investigations opened.

### Investigations opened quarterly



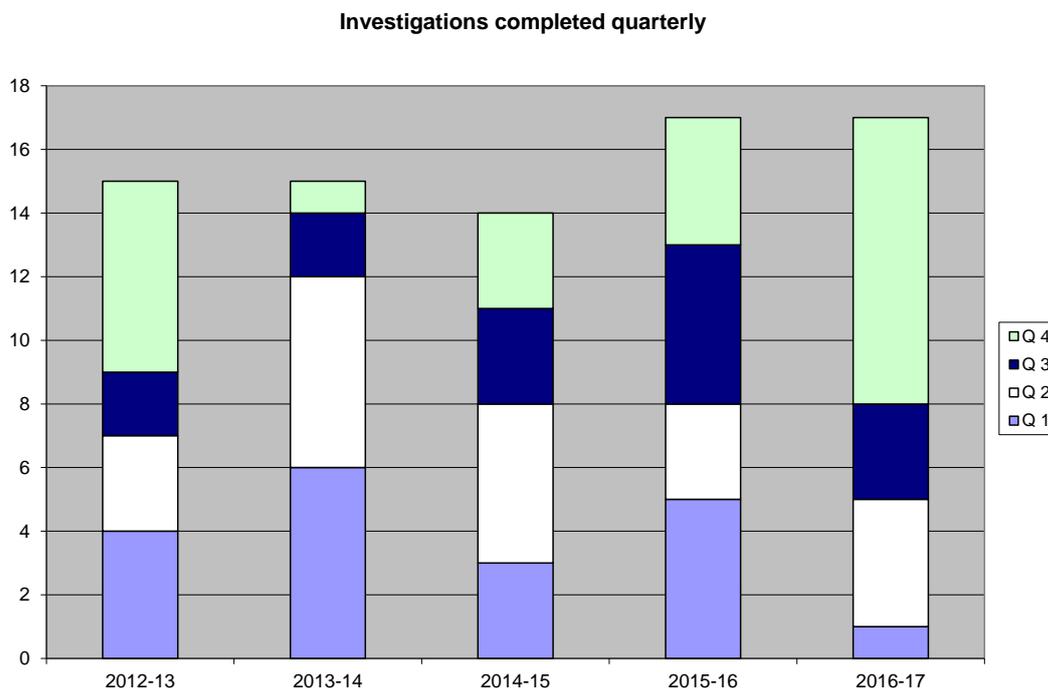
15. There is no evident seasonality in the profile of complaints, but with such small numbers it would be hard to derive any statistically significant conclusions from the data. With small numbers of cases I would not expect to see the sort of averaging which would be expected if I was dealing with several hundred complaints or more annually.

16. The number of complaints entering the first level of the Trust's complaints process has seen a significant fall over the past ten years. In 2005-06 there were 1,001 such complaints, with 99 entering the second level and 29 Ombudsman investigations. This year, over ten years later, the Trust handled 234 complaints at the first level of the ICP, up on the previous year's 222. It handled 34 at the second level compared with 40 the previous year, so there have been no statistically significant changes. I opened 14 investigations, but because of time lags some of those will have completed the ICP in the previous year. In round figures, some two in five of the complainants who complete the second level of the ICP subsequently come to me.

17. I completed 17 investigations in the year (listed in the Annex to this report), which covered 11 distinct subjects, in comparison with last year where there were 15 different topics from 17 investigations. Three topics gave rise to nine investigations. There were four complaints about the continuous cruising guidance, three from residents about the impact of boaters mooring outside their properties, and two about damage to boats from underwater hazards.

18. Of the investigations I completed, I partly upheld two (cases [898](#) and [919](#)), and while I did not uphold two others (cases [908](#) and [914](#)) I recommended in both cases that the Trust make a goodwill award for shortfalls in customer service. Unusually, in two investigations (cases [837](#) and [848](#)) I decided not to make a finding. These were very complex cases intrinsically linked with the Trust's London Mooring Strategy and a steady increase over a number of years in the number of boats in the London area. I did not uphold the remaining 12 cases. In both of the complaints which I upheld in part I recommended that the Trust make a goodwill award. In all three cases where I recommended a goodwill award the complainants accepted the awards, which therefore became binding on the Trust.

19. The chart below shows the number of investigations completed by quarter, for the last five years.



### Time taken to complete investigations

20. Under the new ADR landscape from July 2015 I am required to complete cases within **90 days** except where they are complex. That period starts from the date on which I receive what is referred to as the Complete Case File (CCF), which is the evidence from the parties, as well as any third party reports or expert input, to complete the investigation. It ends on the date on which I issue my final report, having previously issued a draft report on which both parties were able to comment. For many consumer disputes, and some of the complaints I handle, it will be possible to determine early in the investigation what evidence is needed.

21. In most cases, however, I need to request or seek further information as the investigation progresses, sometimes several times as new issues are revealed. Examples of this are where I need further information about the legal background to a situation, or where I need historic information about a canal. I have therefore decided, for practical purposes, to use the date on which I receive sufficient evidence to start the investigation as the start date. The need to make further information requests inevitably leads to some delays, but I have always been accommodate such delays within the timetable, and in no case has this led to a case which is not complex exceeding the 90 day timetable.

22. In the past year I have opened only two investigations where the date on which I received the CCF was more than a month after the date on which I decided to accept the complaint for investigation. In one case the delay was 115 days, when I was awaiting further information from the complainant, and in the other it was 36 days, when I was waiting to have a discussion with the Trust. The average gap, which includes these two cases, was 15 days.

23. If a case is complex and will, or seems likely to, take more than 90 days then I must notify the parties before the 90 day target is exceeded. What constitutes a complex case is not defined in the ADR Regulations. The Regulations are aimed at consumer disputes, but the majority of the complaints that I receive relate to matters which would generally be regarded as more complex, such as those which are about liveaboard boaters or may otherwise have a significant impact on lifestyles. I would therefore expect many of the complaints I receive to be more complex than the majority of consumer disputes.

24. By way of example, I would regard a complaint about a single issue, such as the licence fee, as not being complex. Where there are multiple issues, where there are other parties involved, or where the analysis is very detailed and/or I need to make a site visit, I would generally regard the case as complex. I have classified cases as complex or not complex regardless of how long they take, because it is important to be able to provide information on the types of cases I receive.

25. I said last year that for cases which I started before the Regulations came into force I had continued to use the previous criteria, such as for calculating durations, which meant that I used the date on which I accepted the complaint for investigation. During the year I closed two cases, both exceptionally complex, which I had opened before the ADR Regulations came into force on 9 July 2015 and where I took the start date for the 90 days as the day on which I accepted the complaint for investigation. It would in any case have been difficult to determine a specific date when I received the CCF, because I was requesting and receiving further evidence throughout the duration of both cases. There are no longer any open investigations which I opened before 9 July 2015.

26. Of the 17 cases I completed, all except three took less than six months to reach a decision, and ten took less than 90 days. All seven cases that took longer than 90 days were complex, while three of the ten that took 90 days or less were complex.

27. For all 17 cases, the average time to complete the investigation was **140 days**, compared with **112 days** for the previous year. However, this figure was very heavily influenced by two cases ([837](#) and [848](#)), which took **660** and **637 days** respectively. Both cases were opened before the ADR Regulations came into force, and as I noted above I used the date on which I accepted the complaints for investigation as the start date. Had I determined the start dates as being when I received the CCFs, they would have been much later. Both were of exceptional complexity, and raised issues about the Trust's core policies and its London Mooring Strategy. There were also two highly complex cases in the previous year, which each took **363** days. If I exclude the two complex cases in each year, the average falls from **78 days** to **72 days** this year. If I exclude all seven cases (all complex) which took more than 90 days, the average for the remaining ten also falls, from **47 days** to **45 days**.

28. An alternative way of looking at the data is to examine how long the complex cases took, and how long the non-complex cases took. All of those which took more than 90 days were complex, but three of those which took 90 days or less were also complex. The complex cases took on average 210 days (101 days if the two outliers are excluded) and the non-complex ones took on average 39 days.

29. The following table shows time to completion for the previous five years.

Time to completion	2012-13	2013-14	2014-15	2015-16	2016-17
<3 months	10 (67%)	10 (67%)	8 (57%)	10 (59%)	10 (59%)
3-6 months	2 (13%)	3 (20%)	5 (36%)	5 (29%)	4 (24%)
6-9 months	2 (13%)	2 (13%)	1 (7%)	0	1 (6%)
9-12 months	1 (7%)	0	0	2 (12%)	0
>1yr	0	0	0	0	2 (12%)

30. There was one open investigation as of 31 March 2017, which I had accepted for investigation on 27 October 2016, with the CCF being received on 2 December 2016.

### Reasons for complaints which were investigated

31. There were a number of themes among the complaints, some of which were matters which had a significant impact on the lives or lifestyles of those affected.

32. There were four complaints about licence restrictions for boaters without a home mooring (BWHM), two from liveaboard boaters and two not. Given the Trust's increased enforcement of the continuous cruising (CC) guidance it was not surprising to receive more complaints than in previous years, but they did throw up issues of concern which I have drawn to the attention of the Trust. In [case 915](#) the Trust did accept that it had incomplete sightings data, and once this was corrected the restriction was lifted and the boater was allowed to have a full 12 month licence. It also highlighted the need for boaters to keep the Trust updated about mooring status, because in this case the boater had not notified the Trust that he had taken a winter mooring.

33. Two of the cases ([931](#) and [933](#)) raised issues about the way in which the Trust assessed compliance with the CC guidance. The Trust's legislation requires BWHM to satisfy it that the boat will be used bona fide for navigation throughout the licence period, and it has issued formal guidance (over a number of years) which explains its understanding of these statutory requirements. At the time of these complaints the Trust's guidance required boaters to exceed the minimum distance (defined as "15-20 miles"), and to demonstrate that they had done so over the course of the year.

34. The complainants had argued that the guidance was not clear and/or ambiguous. I noted that the existing guidance meant that boats would be assessed for only 10 months of the licence year (the final two months being to allow for the licence renewal process). When I raised this point with the Trust it did say that it had decided that in future it would use a 12 month period where the licence was a renewal, which would include sightings data for the final two months of the previous licence period.

35. Although I did not uphold either complaint, my view was that the Trust's online guidance was not as clear as it could have been. I did make suggestions on how it could be improved and clarified, which the Trust were happy to take on board.

36. There are areas on the canal network where there are high concentrations of BWHM, one of which is the western end of the Kennet & Avon Canal. The increase in enforcement activity by the Trust has led to some BWHM, especially those with school age children, saying that they have had difficulty complying with the CC guidance, although the Trust has pointed out that some boaters with school age children do comply. I know that the Trust is aware of the difficulties, and has been working with boaters to develop proposals to better enable those boaters to comply with the guidance. My view is that any improvements in the Trust's guidance, as well the provision of greater clarity on what would, or would not, be

acceptable cruising patterns, would be likely to reduce any scope for uncertainty. It would also mean that if complaints do eventually come to me it will be more straightforward for me to determine whether the Trust has adhered to its own guidance and policies.

37. I completed three investigations arising from complaints from residents in London, who lived next to the towpath, about boaters and their activities. Two (cases [837](#) and [848](#)) related to different sections of the Regent's Canal, one in Camden and the other in Islington, but were both about problems from boaters causing pollution, such as from diesel generators, engines or stoves, as well as noise, such as chopping wood or playing music. It was clear that some boaters were flouting the regulations, for example by creating noise or using generators during unsocial hours, but there were much more fundamental problems. The number of boats on London's waterways is increasing and the Trust has no powers to restrict the number of boats in the capital. It also has no powers to control pollution because (apart from dark smoke) the Clean Air Act 1990 does not apply to waterways. Local authorities do have some powers but it is necessary for staff members to witness the alleged nuisance themselves before action can be taken, and in most cases by the time someone has arrived, whatever was causing the nuisance has stopped.

38. I explored many possible solutions, and had many meetings with the Trust, as well as with the complainants and their neighbours, Councillors, caretaker boaters and other stakeholders. The causes of the problems were deep-rooted, and I concluded that the solutions lay in a combination of enforcement and the Trust's policies. Towards the end of my investigations there were advanced proposals for the installation of electricity bollards, which had from the start been suggested as the most effective single way to avoid the noise and pollution from generators and engines. In both cases there were no requirements that I could have made which hadn't already been considered or weren't matters of Trust policy.

39. The other complaint ([case 916](#)) was about an unlicensed liveaboard boater on the Grand Union Canal who refused to move his boat. Where a liveaboard boater is failing to comply with the Trust's rules or guidance, the Trust is generally unable to seize the boat or move it by force because of the risk of making the boat-owner homeless, and in most cases will need to take court action. In this case I was satisfied that the Trust was doing everything it reasonably could, both via legal and more informal routes, to resolve the problem. The process of removing a boat in such circumstances can take many months because it is subject to courts' timetabling and the availability of judges, which is outside the Trust's ability to control.

40. There were two investigations about damage to boats caused by an underwater object. In one case ([case 880](#)) the boater did not have comprehensive insurance, and wanted the Trust to pay for the repairs to his boat. In the other ([case 914](#)) the boater did have comprehensive insurance but wanted to claim from the Trust what he thought was the shortfall arising from his own insurance claim. Both cases were about liability and whether the Trust should be liable for damage to boats from when using its waterways.

41. The complainant in case 880 argued that the Trust had shown "a serious and persistent failure" to discharge its statutory duty to ensure a prescribed depth of navigation on a particular area of its network. The Trust said that (even if it could be shown that the Trust had not met this duty, which it did not accept) the wording of the statute was clear that the only remedy was to seek a court order to enforce the duty (e.g. by dredging) rather than an action for damages in respect of damage to a boat as a result of this lack of navigation depth. Furthermore, it argued that it could not be liable for vessels striking objects in the canal unless it was made aware of a specific obstruction and had failed to respond within a

reasonable timeframe. I had no reason to doubt that the damage arose from the boats striking underwater objects, but the Trust argued that there was nothing in law which would make it liable for the damage where it had not previously been made aware of a specific obstruction. In case 914 the boater did have comprehensive insurance but my conclusion was that his perception of a financial shortfall was more a matter of his insurance claim than one for the Trust to deal with.

42. I concluded, based on my understanding of situation and the law, that in both cases the Trust was not liable for the damage caused to the boats. I added that it may not be the only conceivable conclusion, and that it was possible that a court or other dispute resolution body would reach a different conclusion.

43. I completed one investigation ([case 919](#)) from a liveaboard boater with a disability, who did not have a home mooring, and who had had difficulties in getting the Trust to make reasonable adjustments to enable him to comply with the CC guidance. He said that the Trust had failed to agree, within a reasonable timescale and in a reasonable manner, to his request for reasonable adjustments under the Equality Act 2010, and that as a result he had suffered stress and inconvenience in addition to the time it took him to obtain the adjustments.

44. The Trust's key argument that it should not have to make any award was that the complainant had started on the process of taking the matter to court but had withdrawn his action when he saw the Trust's defence and that it should not be open for a complainant to seek to effectively re-open a legal case, which he had already withdrawn from court, through the Ombudsman process. I did not agree that this meant that the Trust had no case to answer, although I did point out that I could not consider anything which was strictly a legal issue related to Equality Act 2010. Although the Trust said that it had acted in the genuine belief that it had dealt properly with the request, it was clear from a number of comments made by the Trust that it accepted that it could have dealt with the matter better. My view was that it could have acted more promptly and helpfully, and I required the Trust to make a goodwill award.

45. The case highlighted the need for the Trust to engage fully and as early as possible in any future cases of this nature, but also the need for complainants to be aware of their options. In embarking on a court process the complainant was poorly advised by lawyers acting on a pro bono basis. Had he completed the legal process, rather than withdrawing before it formally commenced, he would probably not have been able to come to me afterwards if he was still not satisfied with the outcome.

46. One complainant ([case 934](#)) thought that the Trust was exceeding its duties in requiring him to pay for a rivers-only licence when he was moored at a pontoon on the River Trent, and not cruising. His main argument was that his boat was not moored in the "main navigable channel", and so the law did not apply to his situation. Both sides adduced many arguments, mainly based on wording either of the law, or various terms and conditions, to support their respective positions.

47. I accepted that the many words written on the subject could be interpreted in support of either party's arguments, but the complainant's arguments were far from clear-cut. I noted that my predecessor had considered a similar complaint in 2010-11, and I said that I could only echo the points she had made, that this was a matter about legal definitions which was more one for the Courts to decide.

## **Fulfilment by the Trust of remedies**

48. I partly upheld two complaints (cases [898](#) and [919](#)). In both cases I recommended that the Trust make a financial award, and both complainants accepted the report and the award. In two other complaints (cases [908](#) and [914](#)) I did not uphold the principal element of the complaint, but I concluded that there had been shortfalls in customer service and recommended that the Trust make a financial award. I did make it clear that the complainants could accept the financial award without compromising their ability to pursue the main complaint by other means if they wished to do so. Both complainants accepted the award. In all cases the Trust made the payment within the required period of 20 working days.

49. In a fifth complaint ([case 916](#)) I did not uphold the complaint but I made a recommendation that the Trust provide regular updates to the complainant on the process of the removal of the boat about which she had complained, which she accepted. As the requirement was not a one-off event it was not appropriate to measure its completion in a conventional way, but I did have to intervene to ensure that the Trust provided the information in a regular and appropriate manner.

## **Service standards**

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

- acknowledgement or response to initial letter, email or telephone call within a week of contact in **90%** of cases; and
- **100%** of investigations completed within 90 days of receipt of the CCF, except where the case is complex.

51. Both targets have been exceeded or reached during 2016-17:

- the first standard has been achieved in 100% of cases; and
- the second standard has been fully achieved.

## **Contacts with stakeholders**

52. During the year I have:

- together with the Chair of my Committee, met representatives of the Residential Boat Owners' Association; and
- attended the annual conference of the Ombudsman Association.

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

## **Surveys**

54. In the previous year, together with the Committee I developed a new customer survey to record complainants' experiences of using the scheme where I had accepted the complaint for investigation. I ask complainants to complete the survey before I issue my draft report, as the intention is to measure their experience of the service without being influenced by the outcome of their complaints.

55. The survey is short, with eight questions. The first seven ask respondents to click on a radio button to rate their experience (for example, question 1 has a range from “very easy” to “very difficult”), and values from 1 to 10 are attributed, 10 being the most positive.

56. I issued 15 invitations, and ten responded. The questions were:

1. How easy was it for you to submit evidence to the Waterways Ombudsman in support of your complaint?
2. How helpful did you find the Waterways Ombudsman website in relation to your complaint? [This question is optional.]
3. How helpful was the Ombudsman?
4. Did the Ombudsman provide useful guidance about how the process works?
5. How quickly did the Ombudsman deal with your initial complaint and any subsequent points or questions?
6. How well informed were you kept about the progress of your complaint?
7. Overall, would you conclude that the Waterways Ombudsman has given you a good level of service?
8. Are there any other comments you would like to make based on your experience of using the Waterways Ombudsman service?

57. Respondents are required to answer Questions 1, and 3-7, but Questions 2 and 8 are optional.

### Responses

Survey	Q1	Q2	Q3	Q4	Q5	Q6	Q7
1	10	N/A	10	10	10	10	10
2	10	N/A	6	6	10	9	8
3	5	6	10	10	10	9	10
4	9	9	10	10	10	10	10
5	9	8	10	10	10	10	9
6	10	9	9	9	9	8	6
7	9	N/A	9	9	8	9	9
8	9	9	10	10	10	10	10
9	10	10	10	10	10	10	10
10	10	7	7	9	10	8	8
<b>Average</b>	<b>9.1</b>	<b>8.3</b>	<b>9.1</b>	<b>9.4</b>	<b>9.7</b>	<b>9.3</b>	<b>9.0</b>

58. The respondents made a number of comments, of which I reproduce a representative selection below.

“The ombudsman and the service provided was excellent. The knowledge of the process by the canal and river trust, who are supposed to signpost you to this service is appalling and they do not follow or understand their own policies and procedures.”

“I've been asked to complete this survey before I receive this so rather than dusting down my crystal ball to answer question 7 I have provided a neutral response.”

“As far as I can determine Andrew Walker is the Ombudsman and has no staff. It is very refreshing to receive a personal service rather than the usual 'computer says no' online registration process which concludes in the system crashing.”

“Even if I do not win the case with the Ombudsman, I do feel now that I am having a fair hearing without the need for vast expense through the courts. Throughout the communications with the Ombudsman have been VERY quick, his replies were made within a day.”

“Overall a great service and a credit to the "Justice" of being given a fair hearing.”

“When I initially enquired, the information given was the right one, which was to discuss with the other party (CRT) a resolution. I ended up in a loop of departments with CRT before getting on with the issue. It would have been very helpful if I could have had a mediator to monitor the discussions and to ensure that CRT was taking it seriously at the time.”

“Although the process was quick and easy, I am somewhat concerned that in reality the Ombudsman has in reality little or no power to fully address concerns.”

### **Conclusion**

59. This has been my fourth full year as the Waterways Ombudsman. The casework has remained largely unchanged from the previous year, and enquiry complaint levels are broadly stable, with perhaps a gently declining trend in numbers. There has again been a wide variety of complaints, although some common themes did emerge.

60. The number of complaints being handled by the Trust has remained fairly stable for a few years, but some of those are among the most intractable, and this is reflected in the complaints which come to me, which often raise particularly difficult or complex issues.

61. As in previous years a number of the cases have raised issues about the interpretation of the law, in particular those related to continuous cruising, damage to boats arising from underwater hazards, and licensing. While I can consider many aspects of such complaints, I cannot decide on how the law should be interpreted, which must remain a matter for the courts or for a regulatory organisation. Although some complainants suggest that I should be able to decide on such issues, I do think there are important differences between the roles of an Ombudsman and a court or regulator, and that it would not be appropriate for me to intervene in these issues.

62. It is certain that I shall continue to receive a number of enquiries which are either not about the Trust, or indeed not even about waterways or boating issues at all, but they do take up only a small fraction of my time, and as far as possible I try to steer them in the direction of the appropriate person or organisation.



Andrew Walker  
Waterways Ombudsman

## Eligible cases for investigations which were completed during the year 2016-17

Rather than including the summaries in the annual report I publish them separately on the website, so the summaries are usually available 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 837](#) – problems arising from boats mooring on a section of the Regent’s Canal

[Case No 848](#) – problems arising from boats mooring on a (different) section of the Regent’s Canal

[Case No 859](#) – insufficient water draught at a mooring

[Case No 880](#) – damage to a boat arising from an alleged failure of the Trust to manage water levels on the Kennet & Avon Canal

[Case No 898](#) – refusal by the Trust to issue a licence without the boat having a valid BSS certificate

[Case No 906](#) – refusal by the Trust to issue a licence until the licence fee arrears had been paid

[Case No 908](#) – allegation that the Trust had mis-sold a mooring which had been advertised as being for residential use only

[Case No 914](#) – losses following the sinking of a boat after it hit an underwater hazard

[Case No 915](#) – licence restriction related to cruising patterns

[Case No 916](#) – nuisance caused by a boater

[Case No 919](#) – shortfalls in service by the Trust in dealing with a request for reasonable adjustments from a boater with a disability

[Case No 920](#) – continuous cruising licence restrictions and other issues

[Case No 931](#) – the issue of a restricted six month licence for a boat without a home mooring

[Case No 933](#) – the issue of a restricted six month licence for a boat without a home mooring, on which school-age children live

[Case No 934](#) – the requirement for a boat to be licensed while moored at a pontoon on the River Trent over riparian land and not used for cruising

[Case No 936](#) – the Trust’s refusal, as the owner of the fishing rights at a lake, to increase the number of fishing places

[Case No 939](#) – the way in which the Trust had granted an angling licence to a club for the sole fishing rights to a stretch of canal

