



THE WATERWAYS
OMBUDSMAN



Annual Reports of

The Waterways Ombudsman Committee

and

The Waterways Ombudsman

2018-19



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ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN COMMITTEE 2018-19

Chair's Report

The Committee was first established in early 2005 to oversee the operation of the Waterways Ombudsman scheme (the Scheme) and the independence and accessibility of the Ombudsman. The Committee has five members, with 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 2019 are:

Independent Members

Kevin Fitzgerald [Chair of the Committee]
Steve Harriott
Karen McArthur

Trust representatives

Tom Deards
Janet Hogben

Member profiles of the Ombudsman Committee as at 31 March 2019

Chair

Kevin Fitzgerald is *Directeur du Cabinet* at the United Nations World Intellectual Property Organisation, Geneva where he recently published a good practice toolkit of legislative and regulatory best practice for collective management organisations. Previously he was Chief Executive of the UK's copyright agency where, inter alia, he led the setting up of regulation for

the copyright industry. His other roles have included being The Independent Member of the Public Diplomacy Committee and a member of the Consular Services Board 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.

Other Independent Members

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.

Karen McArthur had leadership roles in Corporate Responsibility/Sustainability for global companies including Vodafone and Thomson Reuters and now has a portfolio of roles advocating for customers including at London Travel Watch, Chartered Banker Professional Standards Board and at MCSSCo. She is an independent member of the water forum at Severn Trent and is Chair of the group advocating for the interests of vulnerable consumers. She is a Trustee for British Gas Energy Trust working to support vulnerable customers across the energy sector and is an Independent Member Nominations Committee at the National Trust as well as a Lay Member of the Audit & Standards Advisory Committee at London Borough of Brent.

Members appointed by the Canal & River Trust

Tom Deards is the head of the Canal & River Trust's legal & governance services, and company secretary. He has responsibility for the legal and governance functions of the Trust. He is a qualified solicitor who joined the Trust's legal team in 2007, having trained and qualified into the asset finance team at City law firm Clifford Chance, before going on to complete a Legal Masters at UCL in Environmental Law, whilst gaining experience working as an environment and planning lawyer in local government. Tom is the Trust's Company Secretary and Data Protection Officer.

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 was previously the Chief People Officer at EDF Energy, a role she retired from at the end of 2017. Her earlier career spanned many functions and leadership roles in various blue chip companies. In December 2018 she was appointed to the Royal Brompton & Harefield Hospital Trust Board.

Independence

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.

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

During 2018 the Committee commissioned a **Peer Review** of the scheme. This Peer Review was undertaken by an expert in dispute resolution who is independent of the waterways. The reviewer's conclusion stated: 'The Scheme's organisation and operation are already compliant with the requirement of the Chartered Trading Standards Institute and the Ombudsman Association. Unsurprisingly therefore there were many examples of good practice seen in this review, leaving a well-deserved impression of an effective and well-organised Scheme. I have made suggestions...for factors to be considered for the future – in doing so I note that some will be constrained by the resources available...' The full review is available on our website¹. The Committee would like to thank the reviewer, Mr. Michael Morgan, for his diligent work.

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 2018-2019 was £38,996.09 (2017-18 £37,661.43) (2016-17 £33,788.33). All expenditure is authorised for payment by the Chair. 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

The Directive 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 means that we meet the requirement of the Directive and the related UK Regulations. The Scheme first obtained certification on 20 August 2015, and it continues to be approved.

Validation by the Ombudsman Association

The Ombudsman Association ("OA") is the professional association for ombudsman schemes and complaint handlers, their staff and others interested in the work of independent complaint resolution. It periodically revalidates its members to ensure that they continue to uphold the standards and principles of the Association. During the year 2017-18 the OA's Executive Committee agreed to its Validation Committee's recommendation to re-validate the Waterways Ombudsman Scheme, and the Scheme remains a validated full voting member.

¹ <https://www.waterways-ombudsman.org/service-standards-and-process/ombudsman-peer-review-2018/>

New appointments

Following an open competition, the Committee has appointed a new Waterways Ombudsman, Sarah Daniel. Sarah is an experienced ombudsman and civil servant. The Committee thanks Andrew Walker for his seven years of service as Ombudsman and wishes him well in his retirement.

An open competition was also held to recruit a new committee member and we are pleased to welcome Karen McArthur, an experienced non-executive director with an interest in consumer affairs.

Tom Deards, head of legal & governance services and company secretary of the Canal & River Trust joined the Committee as one of the two representatives of the Trust.

What is a complaint?

It was brought to the attention of the Committee that Users felt unable to 'complain' about a Trust policy. Indeed, within the remit of the scheme, a complaint can only be about the Trust's failure to follow its own policies and procedures not about the policies and procedures themselves. The Trust has helpfully amended its guidance on the nature of a complaint and the nature of a policy challenge.

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. During the year the Committee has been working to extend the work of the Ombudsman into other canals and waterways where the services of an independent Ombudsman would be helpful and we are at draft agreement stage with one other waterway; it is anticipated that the agreement will be signed later in 2019. The Committee has decided to recruit an additional independent member to improve the retention of knowledge at the time of rotation and to ensure that there is a reduced risk of not being quorate; this appointment is anticipated for the autumn of 2019. The Committee is consulting about the inclusion of a User Representative as an Observer to improve transparency and to offer additional perspective to our deliberations.

A handwritten signature in black ink that reads "K. Fitzgerald". The signature is written in a cursive style and is followed by a horizontal flourish line.

Kevin Fitzgerald CMG
Chair, Waterways Ombudsman Committee

ANNUAL REPORT

THE WATERWAYS OMBUDSMAN 2018-19

Introduction

1. This is my seventh and final annual report as Waterways Ombudsman, covering the period from 1 April 2018 to 31 March 2019.

2. In previous years I have reviewed a number of significant issues, such as the changing ADR (Alternative Dispute Resolution) landscape, in particular the coming into force of the ADR Regulations². There have been no significant external events this year. I was an observer and advisor to the Independent Members of the Committee in the process of selecting and appointing my successor.

Casework – enquiries

3. An enquiry is any kind of approach, regardless of whether or not it falls within my remit. I categorise enquiries into four groups, although there are sometimes small overlaps; for example I occasionally get enquiries where the complainant has not started the Trust's complaints process, but is making initial enquiries about certain aspects of their situation, or I am only copied on an email about an issue which would be likely to fall within my jurisdiction if the complainant wished to pursue the matter further.

4. The first of the four groups is those enquiries where the Trust's internal complaints process ("ICP") has been completed and the matter falls within my jurisdiction. The second is those which would be likely to fall within my jurisdiction, and where I could open an investigation if the ICP had been completed. The third is those which are in some way about the Trust or the Waterways Ombudsman Scheme, but where no complaint has been made, and in some cases I might only have been copied in on emails. The final group is those which are not about the Trust, the Ombudsman Scheme, or indeed about waterways at all.

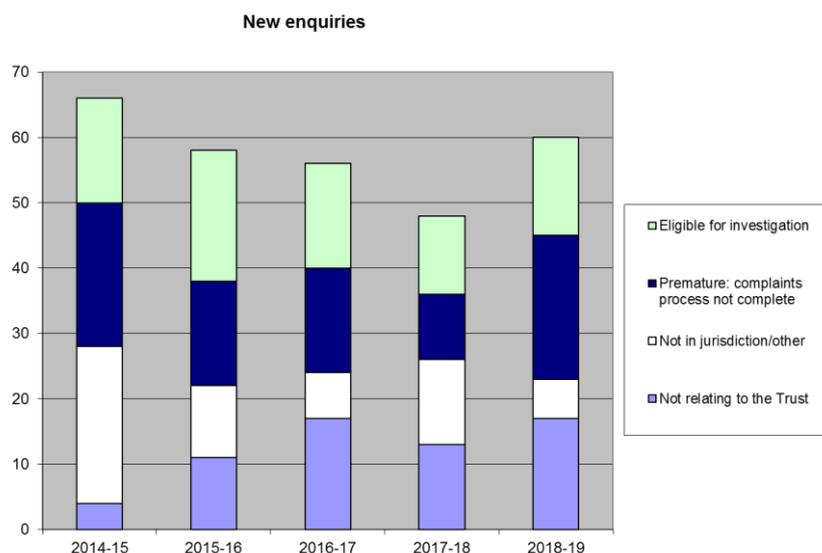
5. After a drop in the total number of enquiries last year, to 48, the number has increased to 60, of which 17 were not about the Trust at all, up from 13 the year before. Eleven of those enquiries were in some way related to inland waterways or boating, one of which was about BWML but after the Trust had sold it. One of those enquiries was about water leaking under pressure from a buried pipe into a commercial property on an industrial estate. The water pipe was carrying water away from a nearby canal, but the law is very clear on such matters, and the responsibility for the pipe and the water it carried was not that of the Trust, but the owner of the land where the leak was located.

6. Although more than a quarter of all the enquiries were not about the Trust, in practice they take very little of my time, and most can be dealt with briefly. That leaves 43 which were in some way related to the Trust or the Waterways Ombudsman Scheme, up from 35 last year. Of those 43, one was about BWML before it was sold (although I did, as I have noted, received an enquiry after it was sold).

7. The chart below shows the number of enquiries I have received during each of the past five years. Given the small number of cases I deal with, it would not be surprising to see

² The full title is The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 SI 2015/542.

fairly substantial changes in numbers from year to year. As it is, the overall numbers have remained fairly stable, but on closer examination there has been quite wide variation in the numbers in each of the four categories. In particular, the number of premature complaints this year was 23, compared with the previous year's 10, and the number not in jurisdiction decreased from 13 to six. Even with such variability, however, there is no evident trend, and it would not be possible or prudent to make any reliable forecasts.



8. The numbers for 2018-19 are set out in the table below:

A	Eligible for investigation	14
B	Premature: internal complaints procedure not complete	23
C	Not in jurisdiction/other	6
D	Not relating to the Trust	17
	Total	60

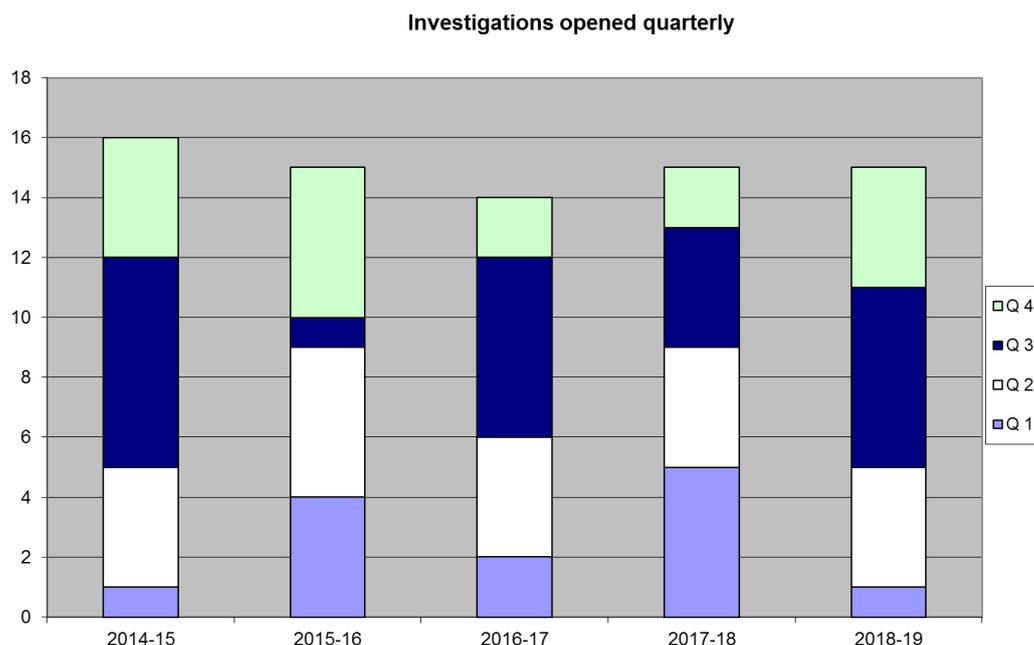
9. Of the 43 enquiries that were about the Trust, 14 were eligible for investigation. There were 23 enquiries relating to the Trust, which might potentially be in my jurisdiction but where the ICP had not been completed. I generally refer such complainants to the ICP, explaining that they can come back 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 before the end of the year and where I have opened an investigation. In most of these cases the complainant does not return.

10. There has been such a sharp increase in those enquiries potentially in my jurisdiction, from ten to 23, and it is appropriate to briefly review the main types of enquiry. There were five about compliance with the continuous cruising guidance, or overstaying notices. I continue to receive enquiries about this subject, but the numbers remain fairly low. Two were about overhanging or overgrowing vegetation, from people who lived next to Trust land. There were three about the Lancaster Canal, two being about leakage and one about navigation restrictions during the dry summer period. There were four about canal infrastructure, including one about poor towpath maintenance, one about a bulging lock wall, and one about dredging. There were also two about BWML. No other enquiry type came up more than once.

11. I categorised six enquiries as “not in jurisdiction/other”, which means that they were in some way related to Waterways Ombudsman or Trust activities. Two of these were about issues which may have eventually fallen within my remit. One was from a business, about what it regarded as very high water abstraction charges, but I explained that as it was a contractual matter I could not intervene.

Casework – investigations

12. I opened 15 new investigations during the year, which was the same as last year, and completed 13, which was one less than in the previous year. There were two investigations open at the start of the year, and four open at the end. The chart below shows the breakdown by quarter for the past five years for investigations opened.



13. Until last year the number of complaints entering the first level of the Trust’s ICP had remained fairly static for a few years. I have previously noted that in 2005-06 there were 1,001 such complaints, with 99 entering the second level, and 29 Ombudsman investigations, but that numbers had dropped substantially and appeared to be fairly stable. Over the five years to last year, the average number of complaints entering the first stage of the ICP had been 225. I said in my previous report that while there had been 252 in that year there was no evidence of a sustained increase.

14. This year the Trust handled 124 complaints at the first level, which was such a significant drop that I asked the Trust for further information. It explained that there were various changes in management at the Trust during this period; for example the ten waterways became six regions, with new managers and directors. My understanding is that this may have led to an under-reporting of first level complaints. There were, however, still 35 at the second level, which was only slightly down on the previous year’s 39. It would be premature to draw any conclusions from these figures, but the Trust expects the 2019/20 figures to be more reliable. The proportion of those complaints which come to me, and which I eventually convert into an investigation, remains at around 40% of the second level complaints.

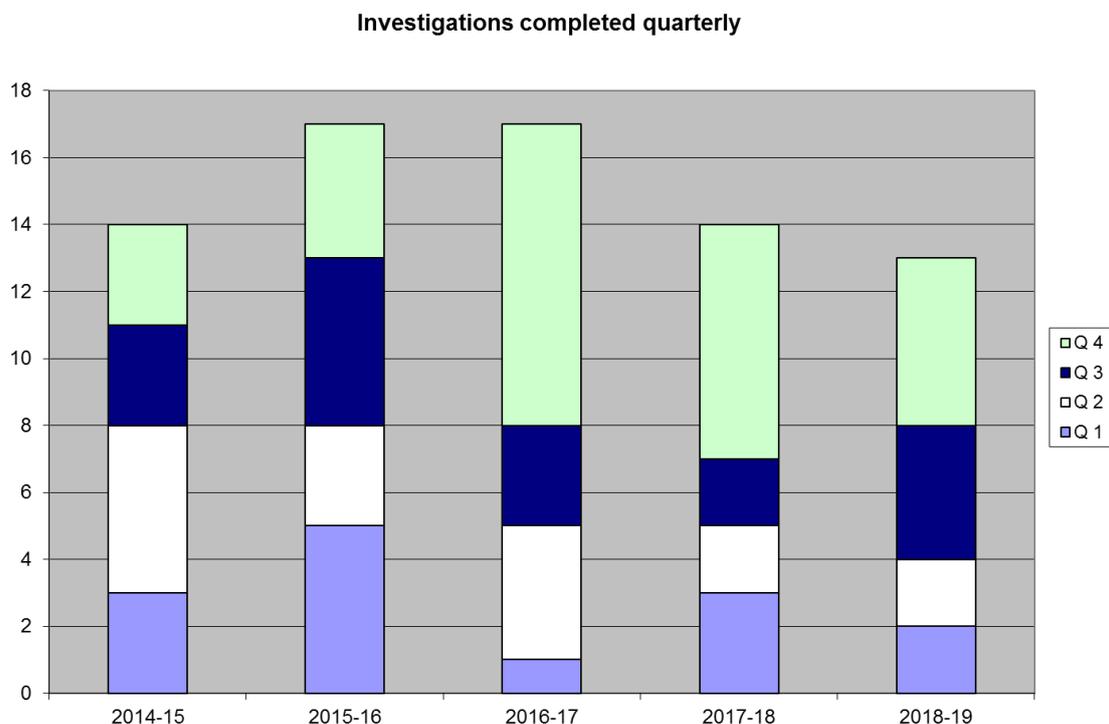
15. Of the 13 investigations I completed (listed in the Annex to this report), the only issue which featured more than once was the continuous cruising guidance, and in one of those cases the complainant did have a home mooring which the Trust had not recognised as such.

All the rest were about widely differing topics, from the Trust’s consultation on wideboat licence fees, to arrangements at a location used as a wedding venue, and whether the Trust had a duty to maintain a river wall. All but three of the complaints were from people who were boaters (or in one case from a person who was intending to buy a boat).

16. I upheld one complaint in part (case 1012), and achieved a mediated settlement in two others (cases 1026 and 1029). Last year I said that the investigations had been marked by their high complexity, but this year they have proved less complex.

17. I think it is important to provide some explanation as to why the proportion of cases I uphold is fairly low, and has been so in previous years. The number of complaints handled by the Trust is low compared with, for example, utility companies. By the time complainants come to me they have already been through a fairly lengthy complaint process with the Trust. That does generally mean that the matter has been investigated in some detail at a senior level, and while it would be premature to conclude that this normally means that the Trust’s final position is a fair and reasonable one, in the majority of cases I investigate, I conclude that it is.

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



Time taken to complete investigations

19. Under the ADR Regulations³ I am required to complete cases within **90 days** except where they are complex. The Regulations apply only to consumer complaints, and not those made by businesses. 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, needed to complete the investigation. It ends on the date on which I issue my final report, having in most cases previously issued a draft report on which both parties had the opportunity to comment.

³ <http://www.legislation.gov.uk/ukxi/2015/542/contents/made>

20. In practice, it is sometimes difficult if not impossible to decide at the start of an investigation exactly what evidence I will need to complete it. In some cases the CCF does include all (or at least almost all) of the evidence I need to complete an investigation, but that is frequently not the case, and the need for further evidence, information or opinion becomes clear only later. While this does lead to delays in completing investigations I do not think it would be appropriate to stop the clock each time I am waiting for further information. This year no consumer case, whether complex or not, has exceeded the 90 day deadline. Only one case exceeded that deadline, but it was a complaint from a business and was also complex.

21. One of the investigations I completed (see paragraph 37) was about a matter which I had agreed with the Trust was primarily a legal matter and one which would not automatically fall within my jurisdiction. In view of the complainant's arguments, his insistence that it was indeed matter for the Ombudsman to consider, the volume of his correspondence, and the sharply opposed positions of the parties, I reviewed the arguments but I did not uphold the complaint. The complainant continued to send me new evidence and arguments throughout the investigation process, and in view of the unusual nature of the case it was neither possible, nor practicable, to determine an exact date on which I had received the CCF. I have therefore left this case out of the calculations below.

22. For the remaining 12 investigations, the average delay between accepting a case for investigation, and receiving the CCF, was just under five days (compared to 23 last year), and in eight cases there was no gap at all.

23. If a consumer complaint 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, but I have previously considered a complaint about a single issue, such as a mooring dispute, as not being complex. Where there have been multiple issues, where other parties are involved, or where the analysis is very detailed and/or I need to make a site visit, I have generally categorised the case as complex, although it is arguable that there is a degree of subjectivity about the matter. I have categorised 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.

24. In practice, however, there is not always a clear correlation between complexity, and how long cases have taken to complete. A relatively straightforward case may take a long time because I am waiting for information, while a complex case can be completed quickly if I need no new information or if I can get answers quickly. As I have noted in paragraph 2.14 of [my response to the peer review](#), the definition of complexity is something my successor may wish to review.

25. As I have already noted, this year's cases have been less complex than the previous year, with four out of 13 being complex compared to 12 out of 14. The reasons are not clear but, as with other observations, the small number of complaints does mean that averages tend to vary more widely from year to year.

26. Of the 12 cases for which I have analysed the statistics, only one took more than 90 days to conclude. As I have already noted, that was a business complaint, and took 156 days.

27. The average time to complete all investigations was **55 days (46 days** when the business complaint is excluded, which is significantly less than the average of **105 days** in the previous year and **140 days** in 2016-17. Those figures were skewed by a small number of very

complex complaints which took a long time to complete. The following table shows time to completion for the past five years.

Time to completion	2014-15	2015-16	2016-17	2017-18	2018-19
<3 months	8 (57%)	10 (59%)	10 (59%)	7 (50%)	11 (92%)
3-6 months	5 (36%)	5 (29%)	4 (24%)	5 (36%)	1 (8%)
6-9 months	1 (7%)	0	1 (6%)	2 (14%)	0
9-12 months	0	2 (12%)	0	0	0
>1yr	0	0	2 (12%)	0	0

Reasons for complaints which were investigated

28. As in previous years, the complaints have again been marked by their diversity. Although I generally cannot examine or review the Trust’s policies, I can consider the way a policy has been drafted, implemented or applied. There were two complaints which were about key policy positions by the Trust. Case [1025](#) was about the Trust’s decision, following a national consultation, to introduce a surcharge for widebeam boats. The Wide Boat Action Group (“WBAG”) complained that in conducting its licence review, including the public consultation, the Trust exceeded its statutory powers as set out in the Transport Act 1962, and did not act in line with its own requirements as set out in its governance documents, with the result that the review, and its outcome, was flawed.

29. WBAG argued that widebeam boat-owners were under-represented in the consultation, compared with narrowboat owners, and while I accepted that this was the case I said that this did not mean that they had been unfairly represented; the two interpretations are fundamentally different. As I was not persuaded that the consultation was flawed, I had no remit consider the policy implications.

30. Case [1038](#) was a complaint by a narrowboat owner about widebeam boats using the North Oxford Canal. Although it is designated as a narrow canal, with locks able to accommodate only narrowboats, the seven mile lock-free southern section between Braunston Junction on the Grand Union Canal, and Hillmorton Locks, is often used by widebeam boats. The complainant argued that there was insufficient room and depth for use by widebeam boats, that this raised issues about safety and navigation, and that the Trust should ban them from using it. He also said that the Trust should not have allowed a new marina development to be able to accommodate widebeam boats.

31. While the Trust accepted that the canal was not suitable for such boats, it had decided not to ban their use, although it did say it would keep the situation under review. Its policy position was not a matter that I could question. I had seen no clear evidence of detriment, although I could not say there would not be so in future. I could also not assume that if there were problems in the future, the Trust would not take appropriate action.

32. Case [1041](#) was about a data breach which had occurred in the Trust’s licence renewal system, whereby contact details of other licensees were included in details sent to other licence-holders, although no bank details or associated financial information had been included in the breach. The complainant said he had suffered from stress and loss of sleep as a result, and wanted compensation.

33. It was not for me, but the Information Commissioner’s Office, to decide whether there had been an infringement, and I could not pre-empt any such decision. If there had been clear evidence of loss it might have been open to me to require the Trust to provide compensation, but there was not, and the relevant legislation does provide for

compensation by way of the courts if a person can show that they have suffered loss, or distress and inconvenience. This was the only complaint I received about the data breach.

34. Case [1026](#) was a complaint from a business which operated a workboat in the London area as a roving trader, providing maintenance and repair services to other boaters. After 18 months of operating without any problems, some local residents complained about the noise from work being done. The Trust concluded that the business was causing what it said was “common nuisance”. In previous years I have considered complaints by residents about nuisance caused by boaters. In those cases the Trust maintained that the applicable definition of nuisance was “statutory nuisance” as described in the Environmental Protection Act 1990. The relevant authority for deciding whether there has been statutory nuisance is the Local Authority’s Environment Health Department, but in those case they did not find such evidence.

35. I was concerned that the Trust may be seeking to adopt a different definition of nuisance, but after I brought the two parties together a mediated settlement was reached which laid out a process for rapidly handling and resolving any future complaints about noise.

36. Case [1029](#) was a complaint by a couple who had their wedding reception at a Trust venue. A number of things had not gone as anticipated or planned, and while the Trust did accept that there had been problems, the couple felt that the goodwill offered failed to recognise the seriousness of the difficulties. I agreed with the complainants, but in this case I felt that to put them through a possibly lengthy two stage decision process would further compound their dissatisfaction about a very personal matter. Instead, I proposed a mediated settlement of an increased goodwill offer, which both parties accepted.

37. Case [1009](#) was a complaint from a person who lived by a river navigation. He was seeking compensation for work he had carried out some years earlier to his section of river wall. His view was that in accordance with an Act of Parliament nearly 300 years old the navigation authority was legally obliged to raise and heighten, and if necessary repair, the river wall if at any time the water level had been raised. The complainant was seeking a significant sum in compensation for work he carried out to his property. He said the level had indeed been raised, which it seemed may be the case, although it was over 120 years ago. The Trust argued that in any case any claim would by now be statute-barred.

38. I said that if the complainant did believe that the Trust should pay him compensation for any damage caused by it or any of its predecessors having raised the water level, I could only suggest that he seek independent legal advice. I explained that if he did have any basis for a claim it was likely to hinge on detailed interpretations of the law, which were beyond my level of expertise. I added that on the purely practical issue of demonstrating that works carried out so long ago led to him needing to carry out remedial work over a century later, he would need to establish cause and effect.

39. He raised a second issue, about whether he was entitled to moor a boat free of charge by his property. I did think that he might at one time have had such a right, but that it would have been extinguished by the Transport Act 1968. He argued that any such right existed in perpetuity if no compensation had been paid, under that Act, for the loss of the right, but I said that as he had bought the property after 1968, any historic mooring right would not have been reflected in the price, and even if there had been any loss it was not he who had suffered it.

40. There were some similarities between the second issue in the previous case, and case [1000](#), where a complainant argued that he had the right to moor free of charge against a plot of land by a canal, which he owned. The Trust refused to recognise the location as a legitimate home mooring. The complainant said that there was an enabling Act, which meant that any pre-existing mooring rights would not have been extinguished by the Transport Act 1968. He was unable to provide any evidence of an enabling Act, or other provision by which he may have retained such a right, and I did not uphold the complaint.

41. He also said that as he was mooring by his own land he should be able to moor there for no charge. He argued that all the Trust was offering was an anchorage, and for this reason he did not want to pay for an End of Garden (EOG) mooring, for which the Trust charges a reduced fee. I also noted that even if he was to request an EOG mooring, the land did not fulfil the current requirement for such a mooring of having a residential property on it.

42. Case [1001](#) was a complaint from a liveaboard boater without a home mooring, who had been sent a 14 day reminder letter stating that her boat had been in the same general area for more than 14 days. She wanted it to be withdrawn, but the Trust's position was that as the letter was not part of its enforcement process it would not do so. I said I could deal with the consequences of events which had happened, but not ones which might happen, but had not. She had received only one notice, but even if three notices had been issued in three months it would not automatically have led to enforcement action, and my view was that she had not suffered any injustice.

43. In case [1042](#) the complainant had an EOG mooring on a canal, but because of insufficient mooring depth was unable to get closer to the bank than around 10', and had to cross to it by a plank. He cancelled his direct debit payments and eventually left the mooring but there were unpaid mooring fees. He argued that the Trust should have dredged his mooring, and that he should not have to pay for a mooring with insufficient depth.

44. The Trust does not guarantee mooring depth for EOG moorings, and indeed having seen the canal bed profile for this section of the canal, even the depth of hard bed (below any silt) allowed insufficient draught for his boat and it could not have been dredged to an adequate depth. I concluded that the Trust was entitled to recoup the mooring fees, and I did not uphold the complaint.

45. With people mooring close together at marinas or other moorings there are occasionally disputes. In case [1024](#) the complainant, who had been at a mooring several years, had a new neighbour. There were problems arising from a number of sources, and her relationship with her new neighbour deteriorated. She was unable to resolve the problems and eventually left the mooring. She maintained that the Trust did not properly address the issues and should have done more to help.

46. I accepted that the complainant may have found herself in a very difficult position, but it was not my role to intervene in disputes between neighbours. I had no doubt that there was a substantial level of hostility between them, but it was not clear that the Trust had a duty to intervene. She wanted reimbursement of her mooring fees from the time the new moorers arrived, but she had a legally binding contract and, in the absence of a finding by me that there had been maladministration by the Trust, I could not require it to reimburse fees she had already paid.

47. Case [1044](#) was about a lady who had purchased a mooring on-line via the Waterside Moorings website, on a rolling 12 month contract, but who never took it up. She was intending to buy a boat, but did not. She said that on a visit to the marina she was told that

the mooring she had bought was one which happened to be wider than the one the Trust said she had bought. She said that on that basis she had put a deposit on a boat that would have been too wide for the mooring she had purchased.

48. She said she had never received the hard copy welcome pack or the email confirming her purchase. It would probably have been impossible to establish whether the Trust had posted a welcome pack, but I had no reason to doubt that the email had been sent. I was satisfied that the berth dimensions would have been available on the website, and that the complainant would have had no reason not to be aware of them at the point of purchase. I concluded that she had entered into a binding agreement with the Trust, and I could not undo it or require the Trust to reimburse the payments she had made.

49. In case [1003](#) a moorer at a BWML marina said that following a campaign of intimidation and victimisation against him by the marina manager he had lodged a formal complaint, but that this had led to him being evicted from the marina for breaching mooring rules. While he accepted that he had breached some rules, he argued that another moorer was at least as culpable as he was but had not been evicted. Although the complainant provided video evidence I could not agree with his interpretation of the events recorded. I did not consider that he had been treated differently from the other moorer for no objective reasons. I accepted BWML's argument that he had breached some of the rules, and I concluded that BWML had acted reasonably in evicting him.

50. In case [1012](#) the complainant had a boat on the western end of the Kennet & Avon Canal. She had a home mooring at one place, but terminated that contract to move to a different home mooring, although she did not tell the Trust where that would be. The actual location was not on the Trust's register of moorings, and after a number of sightings it concluded that the boat was not adhering to the continuous cruising guidance.

51. There had clearly been some confusion about the mooring location, which was corrected, but in the meantime the Trust had, after leaving one voicemail message, written to the complainant to say that she would not be offered a new continuous cruising licence unless she got a home mooring. The Trust did accept that the location was a legitimate home mooring. It apologised for shortfalls in service, and offered her a goodwill award of £50. I broadly agreed with the Trust's own conclusions, but felt that the award offered did not fully reflect the problems, and increased it to £100, which the complainant accepted.

Fulfilment by the Trust of remedies

52. I partly upheld one complaint ([1012](#)) and required the Trust to increase its goodwill award, which the complainant accepted, and I reached a mediated settlement in the other ([1029](#)). In both cases the Trust made the payment within the required period of 20 working days. In case [1026](#) there was a mediated settlement, but it did not include any award.

Service standards

53. 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.

54. Both targets have been exceeded or reached during 2018-19:

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

Contacts with stakeholders

55. During the year I attended:

- the annual conference of the Ombudsman Association in May 2018.

Surveys

56. This was the fourth full year of using a 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. The survey is short, with nine questions. The first eight 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.

57. I issued nine invitations, and four responded. Questions 3 and 9 are optional. The questions are:

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

Responses

Survey	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8
1000	10	7	7	8	8	8	8	8
1024	7	10	8	10	10	9	10	10
1026	10	10	10	10	10	10	10	10
1038	10	10	10	10	10	9	10	10
Average	9.3	9.3	8.8	9.5	9.5	9.0	9.5	9.5

58. The respondents made some comments (Q9), shown below.

"I feel the whole process is overly lengthy."

"After extremely poor service and responses from canal and river trust I was extremely grateful for the prompt and professional help I received from the ombudsman. He has been understanding, supportive and informative."

Conclusions

59. As I said in my introduction, this is my final annual report as Ombudsman, before I hand over to my successor at the end of July 2019. On my departure I shall have been the Ombudsman for nearly seven years, having taken over from my predecessor, Hilary Bainbridge, in November 2012, just four months after the Trust came into being.

60. In her final annual report (2011-12) Hilary reflected on her period of office, commenting on the major changes which had taken place during that time. Although the Trust was a new entity when I started, it had inherited many long-established functions from British Waterways in England and Wales, while Scottish Canals inherited British Waterways' functions in Scotland. She also reviewed the changes in the operation of the Waterways Ombudsman Scheme, including the introduction of a computer system and the development of a website.

61. During my time as the Ombudsman the changes have been more evolutionary than revolutionary. I have watched the Trust develop as an organisation, and I am sure it will continue to do so. There has been one change worth noting, which was the Trust's sale to the private sector of its BWML subsidiary. Customers of BWML no longer have the option to use the Waterways Ombudsman Scheme if they are unable to resolve their complaints.

62. I have maintained the computer system I inherited, and have largely dispensed with paper files, generally digitising the few paper documents I receive. Most complainants submit their evidence by email, and the number of complaints I receive by post, which was never very high, has dwindled almost to nothing. I have redeveloped the website, taking the opportunity to improve its presentation on mobile and tablet devices.

63. Hilary noted that during her time she investigated an average of 25 complaints per year, and that during her last three years it was an average of 22. During my time the numbers have been lower, but have remained fairly stable at an average of 16 per year. In the last seven years I have dealt with nearly 400 enquiries, which is a significant drop from the 700 or so my predecessor received, but during my time as Ombudsman the numbers have remained broadly static. The largest single group of enquiry categories remains those where the ICP has not been completed. In a field with such variety and so many stakeholder groups this is not surprising, and many people come to me for guidance on such matters as how to pursue a complaint, and to get an independent view of their situation, before they make a complaint to the Trust, or at least before the Trust has completed its internal complaints process.

64. There are some constant themes to the complaints, such as those about compliance with the continuous cruising guidance, end of garden moorings, and overgrowing or overhanging vegetation, but on the whole the sheer variety of issues which come to me makes them hard to categorise. I continue to receive complaints about such issues as boat seizures, the licence fee structure, and licence and mooring fees, but in most cases there is not much I can do as such complaints are about commercial, legal or policy matters.

65. In terms of the regulatory and ADR landscape, in 2016 the Scheme achieved revalidation as a full voting member of the Ombudsman Association. There have been other changes, in particular the coming into force of the ADR Regulations in 2015. This set certain standards for ADR schemes in order to be accredited, with an annual accreditation process, which necessitated a fairly substantial review of the Rules of the Scheme. The Waterways Ombudsman Scheme has been unconditionally approved in every year since the ADR Regulations came into force. The GDPR has also come into force, and I have made the necessary changes to ensure that the Scheme is GDPR-compliant.

66. The work has proved to be fascinating, and at times quite challenging. I have been very grateful for the support of my Committee, which over the past few years has frequently been invaluable. I wish my successor well.

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

Andrew Walker
Waterways Ombudsman

Eligible cases for investigation which were completed during the year 2018-19

I publish the summaries on the website, so they 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 1000](#) – refusal to recognise a home mooring

[Case No 1001](#) – refusal to withdraw an overstaying notice

[Case No 1003](#) – eviction from a marina

[Case No 1009](#) – Weaver Navigation river wall and seizure of boats

[Case No 1012](#) – home mooring and Continuous Cruising pattern

[Case No 1024](#) – problems with a neighbour at a marina

[Case No 1025](#) – widebeam licence fees consultation

[Case No 1026](#) – London mooring restrictions affecting business

[Case No 1029](#) – wedding venue arrangements

[Case No 1038](#) – North Oxford Canal use by widebeam boats

[Case No 1041](#) – compensation for data breach

[Case No 1042](#) – inadequate mooring depth on SU Canal and Trust refusal to dredge

[Case No 1044](#) – mooring purchase problems at a marina

