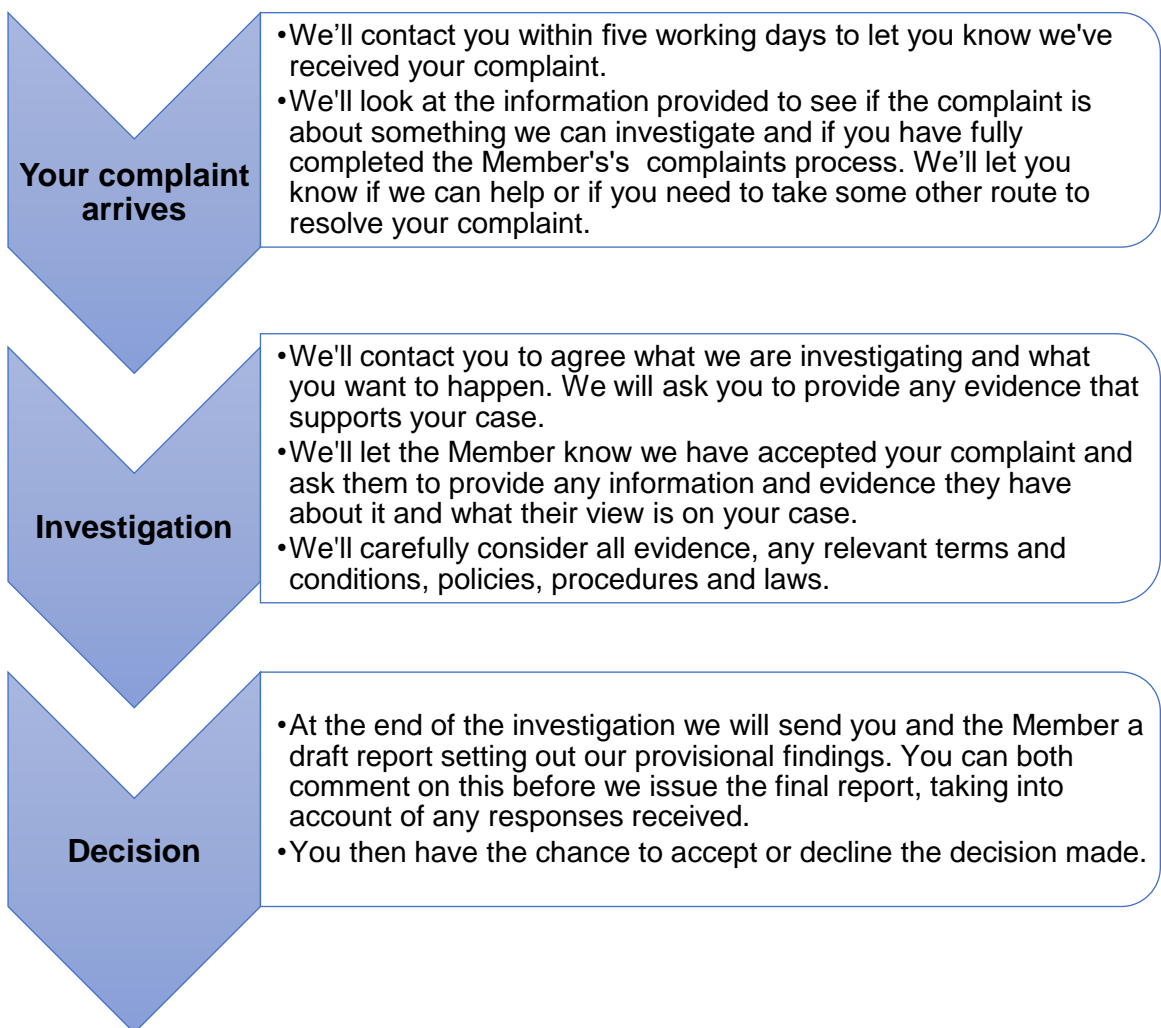


# Waterways Ombudsman – How complaints are handled

The Waterways Ombudsman is the final stage for complaints about the Canal and River Trust and the Avon Navigation Trust, our Members. We investigate complaints that have been through the Member's full complaints procedure. This gives them the chance to put things right. For further information on their complaints process or how to complain please visit their websites.

## What happens to your complaint? A step by step guide.



# Investigating your complaint

## **Accepting the complaint**

As all complaints are different the ombudsman will decide how far and in what way to investigate and resolve each complaint. We deal with complaints free of charge for complainants.

When we receive the complaint, the ombudsman will review the information provided and may request further details from you or the Member. The ombudsman will let you know if your complaint is one which we can or should investigate. If the ombudsman does not accept your complaint, we will explain why.

The ombudsman will always try to resolve the complaint in the most effective and efficient way. If the ombudsman sees an opportunity to resolve your complaint informally, we may try this as an alternative to completing a formal investigation.

If the ombudsman agrees to investigate your complaint, we will ask you to agree a summary of the matters to be investigated. The ombudsman will explain how we will conduct the investigation and likely time scales. The ombudsman will want to make sure we understand both sides of the story in order to make an independent and impartial judgement.

## **Gathering evidence and how we use it.**

The ombudsman is inquisitorial, meaning we ask questions to get to the heart of the matter. We base decisions on what the ombudsman considers fair and reasonable in the circumstances described. The ombudsman has regard to legal principles, policies and procedures and rules and regulations. This means that an outcome of an ombudsman's investigation may not be the same as one made by a court.

In some cases, the ombudsman may have enough evidence to reach a provisional conclusion from papers you have supplied. In others, the ombudsman may need to do any or all of the following: obtain comments or documentary evidence from the Member; visit a site; interview people involved in the complaint, including you; or seek the views of third parties, or an expert opinion. It is important that all information and evidence is provided as soon as possible so the ombudsman has all the relevant facts before reaching a conclusion.

During the investigation the ombudsman will consider evidence from both parties. Usually most, if not all, of the evidence received by the ombudsman will already be available to both parties. If the ombudsman is provided evidence by one party, which the other party does not have, the ombudsman will provide it to the other party if it is relevant to the investigation. Both parties may wish to see copies of the evidence provided by the other party, and this will be provided on request. If information has been provided by a third party, or evidence includes information about a third party, which is personal information covered by current data protection law, the ombudsman will seek the permission of the third party to provide it. If

such permission is not granted it may be necessary to redact personal information from evidence provided to others.

As a complainant you are not obliged to retain a lawyer or a legal advisor, but if you wish to do so you may seek independent advice, or you may be represented or assisted by a third party (such as a friend or family member), at any stage of the procedure. You should be aware that as the ombudsman scheme is an alternative to the courts, if you incur legal fees it is unlikely the ombudsman will be able to consider reimbursement of these.

### **The Investigation**

The ombudsman will look at all the available evidence to see what happened, take account of any independent specialist advice, and the views and opinions of both the person making the complaint and the Member being complained about.

The ombudsman will consider any relevant legal principles, check the Member's policies and procedures have been correctly followed and look to see if any other rules and regulations have to be taken into account and, if so, if they have been correctly applied.

The ombudsman will be checking to make sure that the Member has treated the complainant in a fair and reasonable way, explained their actions if there is any evidence of maladministration in the way the member has conducted themselves. This means that an outcome of an ombudsman's investigation may not be the same as one made by a court.

## **Making our decision**

The ombudsman makes decisions based on what they consider to be fair and reasonable in the circumstances described to them, taking into account all of the evidence provided.

When the ombudsman has completed the investigation, we will send a draft decision on your complaint to both parties. This will, as appropriate, include a summary of the views of the complainant and the member, a summary of the evidence the ombudsman considers relevant to the decision, an explanation of the ombudsman's view as to whether there was any maladministration and injustice and, if there was, the recommended remedy or remedies.

You and the Member will have the chance to comment on that draft decision before the ombudsman makes a final decision and issues a final report. The decision is only likely to change if you are able to identify an error or a mistake as to a material fact in the ombudsman's understanding of your complaint or if you have new evidence which was not available to you when you originally submitted your complaint.

You retain the right to withdraw your complaint at any stage if you wish to do so.

The ombudsman aims to deal with each case as quickly as possible and must generally complete the investigation within 90 calendar days. If the case is complex, it may take longer but we will advise you if this is the case. The time begins when the ombudsman has received the relevant evidence and opinion (what is known as the Complete Case File).

If the ombudsman upholds your complaint and makes a recommendation you will have a choice whether to accept the recommendations or to decline them. If you accept them, it will be in full and final settlement of your complaint and the Member will be required to carry them out. If you do not, the Member will not be required to do anything. That will be the end of the ombudsman's involvement, and you may then seek redress via alternative means such as the courts. If you accept any recommendations the ombudsman will remain involved with the complaint at least until we receive a commitment that appropriate action has been, or will be, taken.

## Next steps

The ombudsman may publish a short summary of your complaint and the decision (in the annual report or on the website). It will be anonymised and so will not include any of your personal details.

If, following an enquiry or investigation, you have any questions or would like further help, you may contact the ombudsman.

There is nobody above the ombudsman available to consider appeals about the decisions. If you have rejected the final decision or have withdrawn from the process you are not prevented from seeking a remedy in the Courts. It is likely the Court would want to see and may consider any decision made by the ombudsman.

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

# Awards and Recommendations

When the ombudsman upholds a complaint and finds that, as a result of the actions or omissions of a Member, the complainant has suffered loss or damage we will consider how to remedy the situation.

The overriding aim is always to try, as far as possible, to put the complainant into the position they were in before the problem started. This may be by asking the Member to take an action to remedy the position or, to compensate the complainant for any loss or damage incurred as a direct result of the Members action or inaction. Actions may include the Member marking a hazard or amending a process to ensure that future problems do not occur or can be dealt with more rapidly if they do.

Sometimes we may recommend a financial remedy which will be based on a number of things some of which will need to be evidenced by the complainant.

## **Direct losses or costs**

Examples would be the cost of repairing damage, refunding overpayments, reasonable incidental costs incurred in making or pursuing the complaint or other costs paid to put the situation right. The ombudsman may request evidence of costs incurred or estimates of future costs.

## **Consequential losses.**

These are losses which the complainant can show have happened as a direct result of the acts or omissions of the Member complained about. They may include costs of having to move location, pay for repair work or increased charges. The ombudsman may request evidence of costs incurred or estimates of future costs.

**Distress and inconvenience** (these awards are not made in relation to commercial or business activities).

Distress is seen as embarrassment, anxiety, disappointment and loss of expectation. The degree of distress arising from the act or omission identified can vary widely; it can be a relatively minor annoyance or, in certain cases, may cause serious worry, loss of sleep or even prolonged ill health. Inconvenience can include any expenditure of the complainant's time and/or effort that has resulted from the act or omission identified. This may range from an insignificant burden to a severe disruption and a great deal of wasted time. The ombudsman will need to understand what distress and inconvenience the complainant has experienced and how this was caused by the wrongful act or omission. The ombudsman will determine the impact in categories from nominal, where no monetary award would be made, through to moderate, substantial, severe, and extreme, where the highest award would be made.