



THE WATERWAYS  
**OMBUDSMAN**

Annual Reports of  
The Waterways Ombudsman Committee  
and  
The Waterways Ombudsman

**2021-2022**





# **Annual Reports of The Waterways Ombudsman Committee and The Waterways Ombudsman 2021-22**

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## **ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN COMMITTEE 2021-22**

### **Chair's Report**

The Committee was established in 2005 to oversee the operation of the Waterways Ombudsman scheme (the Scheme) and the independence and accessibility of the Ombudsman. This report covers the period April 2021 to March 2022.

I am pleased to present my second Annual Report as Chair of the committee. Last year we increased the committee membership to ensure we had the right level and breadth of experience and knowledge to maintain effective oversight. This has proved to be successful as we have improved, and in some cases created, documented policies and procedures. We have also benefitted from the knowledge and experience bought by the two Member observers on the board.

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.

There have been four committee meetings in this reporting period, in June, September, December 2021 and March 2022. All meetings were held via Zoom. The Committee will adopt a hybrid working approach going forward as it believes it to be an efficient and effective way of discharging its duties. The Committee continued to embrace technology further by using Diligent Board Books to share information electronically and build up a library of resources.

The Committee has a responsibility to ensure that the Scheme is effective. This year Committee members became subject matter leads, taking on responsibility for specific and various areas of the Scheme. This allowed members to use their area of expertise and allowed us to put into place some new policies. This year we have enhanced the Risk Register, by distinguishing between Ombudsman and Committee owned risks. We agreed a Code of Conduct for Committee members, an Expenses Policy, a Lone Worker Safety Policy, considered engagement and expansion and planned the format of future meetings.

One of my roles as Chair is to consider complaints about the service or process followed by the Ombudsman. This year I dealt with three complaints. They were a mix



of process issues, which I did not uphold, and complaint related issues which are not within my remit to address. The Ombudsman reports to each committee meeting and includes details of these service complaints so we can understand what happened and see if there is anything that could have been done differently. One of the complainants went on to serve the Ombudsman with a request for a Judicial Review. This is the first time such action has been taken. We sought legal advice to help compile and present our Acknowledgement of Service to explain why we did not agree with the request. The Court granted the application to strike out the claim.

## **Finances**

The Committee appoints the Ombudsman, and the Committee is funded by its waterway members to meet the costs of this service. All expenditure has been authorised for payment by the designated committee member. The Ombudsman charges for services on a time and materials basis and is not an employee of the Committee or the Canal & River Trust.

The total cost of the Ombudsman service in 2021-22 was £35,683.07  
This is made up as:

Ombudsman pay: £30,781  
Ombudsman expenses: £4,902.07

Ombudsman expenses include the costs to facilitate home working, but the major expenses are the payment of annual membership fees, such as the Ombudsman Association, Chartered Trading Standards Institute, and Information Commissioners Office fees.

## **Independence**

The Scheme continues to be a member of the Ombudsman Association, a requirement of which is that the Committee is independent. The Scheme continues to be approved by the Chartered Trading Standards Institute, this certification means that we meet the requirement of the EU Alternative Dispute Resolution Directive and the related UK Regulations.

## **New Business**

We continue to seek interest from other waterways which are not part of a statutory Alternative Dispute Resolution Scheme. A larger scheme provides the opportunity to ensure that more waterway users have access to a free user-friendly complaints resolution service. This is a work in progress and will continue over the next couple of years.

## **Looking forward**

The Committee remains focussed on ensuring that an effective Ombudsman Scheme is made available to those who use the services provided by its members or any of their subsidiaries, or who may be affected by their activities.

The subject matter leads will continue to work on their designated areas making best use of the members expertise and skills. As virtual meetings have been successful, we



plan to continue to meet this way for the majority of meetings and to hold one in person meeting a year where we will cover topics in depth and invite guest speakers.

I'd like to record my thanks to Claire Stokes, who resigned in March 2022, for her work on the risk register and the expenses policy and for her much-valued contribution to discussions. Also, thanks to Stella Ridgeway, whose time as a Trust Observer ended in the summer. Stella provided an essential boaters' view to our discussions.

Karen McArthur  
Chair  
Waterways Ombudsman Committee  
June 2022





## Annex

# Committee members and their profiles.

The Committee members at the 31 March 2022 are:

### **Independent Members**

Karen McArthur [Chair]  
Alan Collins  
Lisa Stallwood  
Claire Stokes  
Jane Brothwood

### **Observers from Canal & River Trust**

Tom Deards  
Janet Hogben

### **Observer from Avon Navigation Trust**

David Greer

### **User Representatives from Canal & River Trust**

Stella Ridgeway  
Dave Mendes de Costa

## **Member profiles of the Ombudsman Committee as at 31 March 2022**

### **Chair Karen McArthur**



Karen is a values driven NED and Chair with experience across a range of sectors, advocating for consumer protection. She is an Independent Commissioner at the Direct Marketing Commission, determining complaints and supporting the organisation as it moves towards a co-regulatory role alongside ASA & ICO. She is also independent Chair of the Stakeholder Group at the Heat Trust which is preparing for regulation.

Among her portfolio are roles as NED at Propertymark, London Travel Watch, Independent Member Nominations Committee at the National Trust as well as serving as a lay member for regulatory bodies.

Previously Karen had leadership roles in Corporate Responsibility/Sustainability for global companies including Vodafone and Thomson Reuters.



## Other Independent Members

### Alan Collins



Alan is a partner at Hugh James solicitors and is a specialist in complex personal injury and clinical negligence cases, including child abuse cases in the UK and abroad. He has experience of representing interested parties before public inquiries including the Independent Jersey Care Inquiry, and IICSA. He was the advocate to

the People's Tribunal (UKCSAPT) which, in 2016, presented its report to the UK Parliament. He is a fellow of APIL, and the treasurer of ACAL. Alan is regularly called upon to comment in the media on legal issues and is also a speaker at conferences: UNICEF; La Trobe University; University of Wales; Law Society of Scotland; Strathclyde University; and Dyfed-Powys Police.

### Lisa Stallwood



Lisa works at the Royal Institution of Chartered Surveyors ('RICS'). Through respected global standards, leading professional progression and trusted data and insight, RICS promotes and enforces the highest professional standards in the development and management of land, real estate, construction and infrastructure.

Lisa is a Lead Investigator with the Institution's regulation team. She investigates high risk and high-profile cases of alleged misconduct within the surveying industry in order to uphold public confidence and professional standards. Lisa's professional experience working within regulation also includes as an investigator at the Financial Ombudsman Service and an Ombudsman at the Legal Ombudsman.

### Claire Stokes resigned March 2022



As a partner and Head of Risk Management for PricewaterhouseCoopers in the UK, Claire led the business risk function. Formerly Deputy Chair of PwC's Supervisory Board, Claire was involved in providing governance challenge across all areas of the business. Claire was also a member of the Management Consulting Leadership Team.

Claire's portfolio now includes membership of Cranfield University Council and she is an independent member of the UK Government's Security Vetting Appeals Panel. Claire works independently as an advisor and consultant on risk management. She is also a trustee of the Friends of Chichester Harbour focusing on education and conservancy issues.



## Jane Brothwood



Jane held a range of senior leadership roles in HM Revenue and Customs. Most recently, as Head of the Adjudicator's Office, investigating complaints about HM Revenue & Customs, the Valuation Office Agency and Home Office Windrush Compensation Scheme and promoting a culture of learning from complaints. In addition, Jane was also chair of the Ombudsman Association Casework Interest Group, sharing best practice and learning from Ombudsman schemes.

Until March 2022, she was an Independent Observer for the Chartered Institute of Taxation. Jane is a Foundation Governor for a local Church of England primary school federation and in 2021 was appointed as Co-opted Governor for a second primary school Governing Body.

## Observers appointed by the Scheme Members

**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.

**David Greer** representing Avon Navigation Trust. David's connection with Britain's inland waterways began in 1972 when he joined the Waterway Recovery Group undertaking restoration work on the Stratford upon Avon Canal. He has been a trustee, council member and legal director of the Avon Navigation Trust (ANT) since March 2015. Before retirement in 2018, he had acted as ANT's solicitor for over 10 years.

As managing partner of his legal practice, he believed strongly in the importance of excellence in consumer care. He was therefore very pleased when ANT decided to join the Waterways Ombudsman Scheme to further its commitment to maintaining high standards for all users of the River Avon.

## User representatives appointed by Canal & River Trust

**Stella Ridgway** (last meeting June 2021) representing Canal and River Trust User groups. Stella was a continuous cruiser mostly on the northern canals. She is now living in the High Peak, having to give up the boat due to her and her husband's illnesses. She and her husband became Friends of the Trust as well as boaters because, as the great granddaughter of a fly boatman out of Middlewich, she believes that this way of life should be preserved, along with the Inland Waterways for now and future generations. She was a previous Council member representing private boaters, and previously worked in the public, hospitality sectors and finance sectors.



**Dave Mendes da Costa** (from September 2021) representing Canal & River Trust user groups. Dave has been a liveaboard boater and continuous cruiser since 2013 on his narrowboat *Stellar* and has travelled around a large part of the inland waterways. He was elected to the National Council of CRT in 2020 and has previously represented boaters through working with the National Bargee Travellers Association, chairing the London branch in 2017. He is excited to represent all CRT users in his role on the Committee. He is currently based in West Yorkshire and works in public policy at a National Charity.

### Attendance at meetings

Member	June 2021	September 2021	December 2021	March 2022
Sarah Daniel Ombudsman				
Karen McArthur				
Alan Collins				
Lisa Stallwood				
Claire Stokes				
Jane Brothwood				
Tom Deards				
Janet Hogben				
David Greer				
Stella Ridgway				
Dave Mendes da Costa				

Key: Green attended

Red not attended

White non member





## **ANNUAL REPORT THE WATERWAYS OMBUDSMAN 2021-22**

### **Welcome**

I am delighted to present my third annual report as Waterways Ombudsman which covers the period 1 April 2021 to 31 March 2022.

Although the year was impacted by the pandemic and restrictions on activities, it was not as severe as the previous year, and the return to normality is much appreciated. As a home-based worker Covid 19 did not impact my work in a practical sense although there were references to the effects of lockdown in complaints and enquiries. The Trust often reported staff shortages due to furlough and the effects of the virus although none of these impacted on the investigation of enquiries and complaints escalated to the Ombudsman.

I deal with complaints which have exhausted the internal complaints procedure of Scheme members, The Canal & River Trust and The Avon Navigation Trust. This year I received one enquiry but no complaints about The Avon Navigation Trust and so all references to 'the Trust' in this report are to The Canal & River Trust.

I continue to learn about the waterways, their structure, how they are used and managed. I have continued to receive detailed and helpful explanations from member schemes who have provided information when requested.



## Numbers at a glance – 2022-22

Total initial contacts

**63**

Complaints resolved

**11**

Of the complaints resolved

**0 Upheld**

The complaint was upheld and the member was required to take some action to put things right.

**7 Partially Upheld**

The complaint was justified in part and the member was required to take some action to put things right.

**4 Not upheld**

The complaint had been investigated and the member had treated the complaint fairly. Process and procedures had been followed and there was no remedy or award was required.

How these contacts get in touch

**3% Postal**

**17% Telephone**

**80% Email**

**33%** of contacts were not in jurisdiction

**50%** of contacts were in jurisdiction but premature

**17%** of contacts were in jurisdiction

Key performance indicators (KPIs)

**100%** of correspondences actioned within 7 days

**27%** complaints resolved in under 8 weeks

**46%** complaints resolved in 8 to 12 weeks

**27%** complaints resolved in over 12 weeks



## Casework

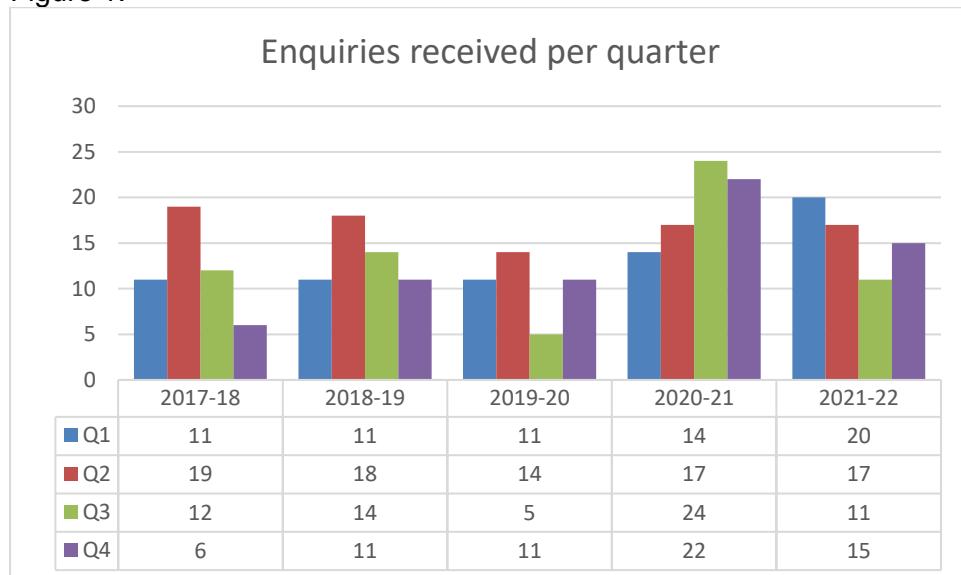
The major part of the Ombudsman's role is casework. As Ombudsman, I am responsible for all aspects of the work, from the initial enquiry to the final decision. The work can be broadly divided into enquiries and investigations.

### Enquiries

An enquiry is any kind of approach, regardless of whether it is something which will result in an investigation. Details of how to contact the Ombudsman are provided on the scheme website as well as in the complaints procedure of the member schemes. Details are also readily available via an internet search, which is where the majority of contacts come from.

This year a total of 63 enquiries were received, 50 by email, 11 by telephone and 2 by post. Despite the low usage and the relatively high cost of providing the PO Box, in the interests of accessibility, it remains in place. One enquiry was received about the Avon Navigation Trust.

Figure 1.



The increase in numbers last year continued in the first two quarters of this year before reducing to those seen in previous years. The number of telephone enquiries reduced from 20 to 11, which may reflect the number of people using a Google search to locate the Scheme. Google analytics show that visitors to the Waterways ombudsman website reduced from 1501 UK users last year to 1266 this year, this may indicate a more targeted approach, as the number of enquiries that were not about the Trust have reduced, as can be seen in Figure 3 below.

Figure 2 shows that numbers vary greatly over the months, I am unable to work out why, there appears to be no pattern. Last year there were 6 complaints which could be directly attributed to the effects of the Coronavirus, this year there were none. This helps to account for the reduction in the enquiries which are not about the Trust, shown in Figure 3.

Figure 2.

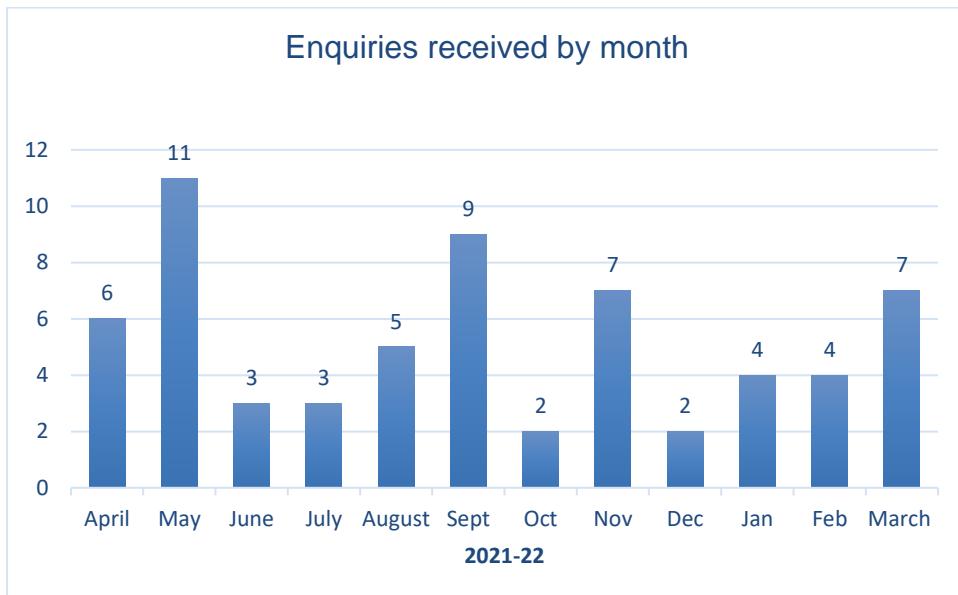
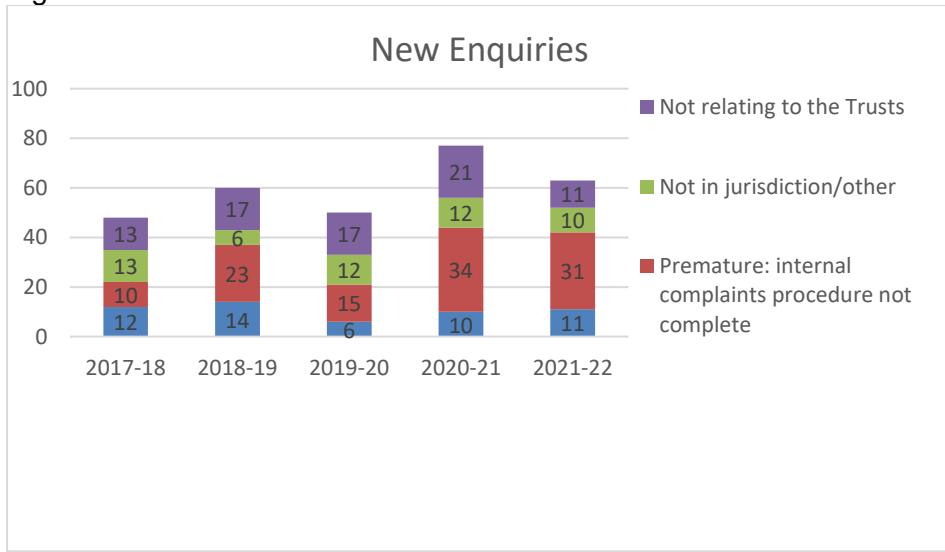


Figure 3 shows that enquiries fall into four groups. The first, shown in blue, is those enquiries where the Trust's internal complaints process ("ICP") has been completed and the matter falls within jurisdiction. The second, shown in red, is those which would be likely to fall within jurisdiction, and where an investigation could be opened if the ICP had been completed. The third, shown in green, is those which are in some way about the Trust or the Waterways Ombudsman Scheme, but which are outside jurisdiction, for example about an employee or a legal issue. The final group, shown in purple, is those which are not about the Trust.

Figure 3.



Eleven of the 42 enquiries were eligible for investigation. There was also a complainant who made an initial enquiry in March 2021 and completed the Internal complaints process and was accepted for investigation at the end of June. In another four of the cases which resulted in an investigation I had referred the complainant back to complete the ICP. The remaining seven contacted the Ombudsman having completed

the full complaints process which is an increase from last year and points to a more efficient ICP.

Almost half of the enquiries are from premature complainants, 31 of the 63 enquiries fall into this category. These complainants were referred to the ICP, explaining that they can come back to the Ombudsman if they remain dissatisfied at the end of the process. The majority of these complainants were already known to the Trust and were part way through the complaints procedure. The number of enquiries from non boaters seemed higher this year, for example, from residents living near the waterways complaining about the damage to their gardens or property and towpath users complaining about other users behaviour or the condition of the towpath. In most cases I pass the complaint details directly to the Trust and I am advised what action is being or will be taken. Although this is a step away from the strict path of the ICP it generally results in an early resolution to the case and I rarely hear from the complainants again. Those that remain dissatisfied return to me at the end of the process.

Enquiries not in jurisdiction totalled 10. These are in some way about the Trust or the Waterways Ombudsman Scheme, but which are outside jurisdiction, for example about an employee, a legal issue or Trust policy.

The final group are complaints not about the Trust. These cover a range of issues including about water utility companies, private marinas and boat holidays.

Everyone who made an enquiry was responded to within five days and, where possible, signposted to the best place to help them. The straightforward examples, where they are not related to the Trust or have not completed the complaints process, are quick to deal with. Others take longer, particularly those about policy decisions or those seeking to reopen previously considered complaints. The redrafting of the Scheme Rules last year has helped to make it clearer that policy decisions are outside the remit of the scheme as they do not fall within the Trust's complaints process and that the Ombudsman can refuse to reconsider complaints.

The Trust has provided in Figure 4, details of the number of complaints it has dealt with through the formal complaints procedure.

Figure 4.

Year	CRT 1 <sup>st</sup> Level	CRT 2 <sup>nd</sup> level	Ombudsman investigation
2017-18	252	39	15
2018-19	124	35	15
2019-20	110	31	7
2020-21	109	28	8
2021-22	54	33	11

As shown figures for first level complaints have halved, although second level complaints have remained fairly static over the years. The change has been attributed to the national rollout of the Trust's first customer relationship management system in March 2021 when it was rolled out to its national, regional and other specialist customer support teams. The Trust has advised that its functionality allows them to more effectively manage their customer enquiries and complaints. Customer and internal correspondence about an enquiry is housed within a 'case' record which is fully auditable and visible to all users of the system, allowing different teams and individuals oversight of the progress and content of a customer enquiry. The Trust says the impact has been an increase in its ability to offer cross departmental support to



assist customers, thereby reducing the number of customer interactions, messages and call backs required, providing an improved customer experience.

Internally the Trust has continued to report on its customer contact and performance on a monthly basis and has been using the dynamic reporting from the new system to monitor the teams' caseloads in real-time. It believes this means that any internal issues preventing resolution for the customer are picked up at an earlier stage. The Trust says it is also able to reliably track cases to provide feedback to customers when a future commitment is met. It does appear to have had a positive impact on the number of complaints progressing into the formal process last financial year as, despite an increase of recorded informal customer dissatisfaction of 52%, the number of formal first level complaint has actually decreased over the same period by 57%.

I am pleased to see that the Trust has invested in this new system, it demonstrates a commitment to customer satisfaction and providing a more efficient and effective mechanism for monitoring complaint outcomes. It will be interesting to see if this continues to see a reduction in level one complaints as issues are dealt with before they enter the process. I would expect to see second level and Ombudsman complaints maintain a similar level as there will always be issues that cannot be resolved to the satisfaction of customers.

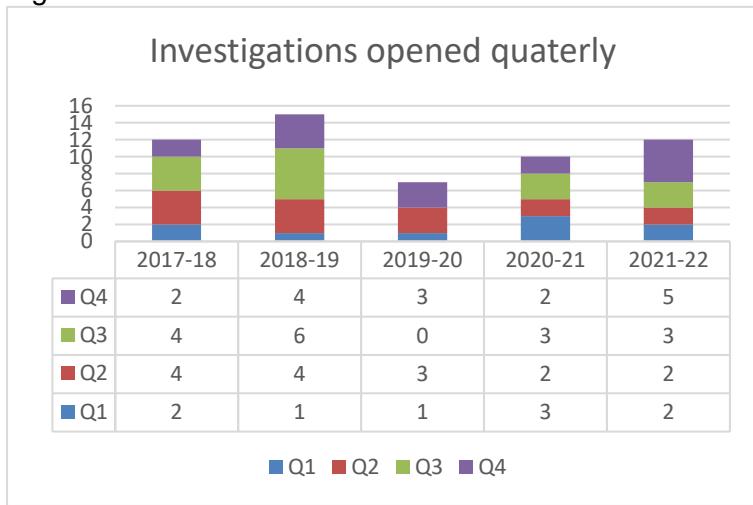


## Investigations

Investigations are undertaken when the complainant remains dissatisfied with the Trust's final response. Complainants have 12 months to bring the complaint to me but generally they do so within a month or two.

Once accepted for investigation, I gather evidence from both sides, produce an initial report, which both parties can comment on, before producing a final report. If the complainant accepts the final report any recommendations are binding on the Trust. This year five complainants declined the final report, one did not respond and five accepted.

Figure 5.



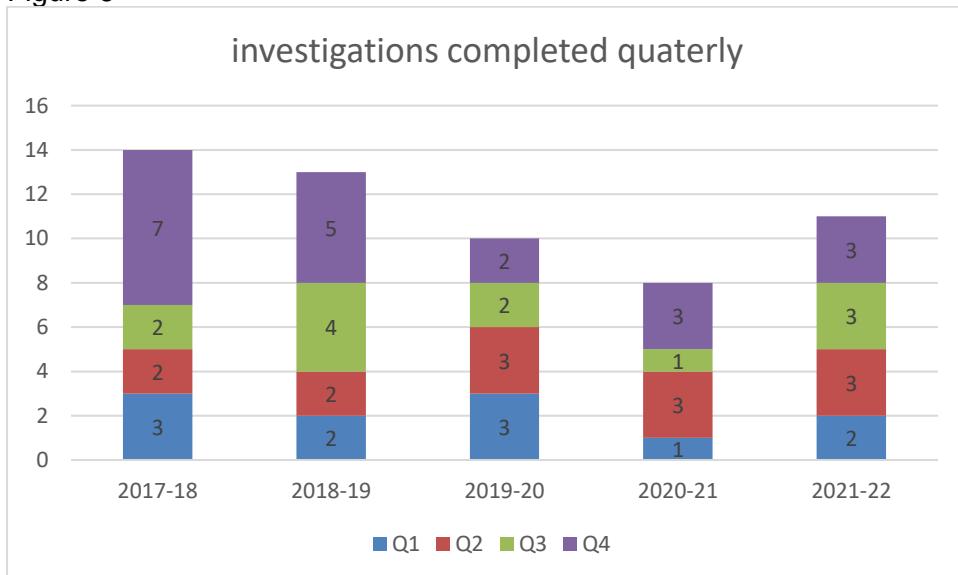
when investigations were opened for the past five years.

This year I opened 12 Investigations and closed 11. There were three investigations open at the start of the year, two of which were completed in April and one in September. Of the two that remained open at the end of the year one was closed in April 2022 and one in May 2022.

This chart shows the breakdown by quarter of

Figure 6 below shows the number of investigations completed by quarter, for the last five years.

Figure 6





This year investigations were almost equally split between complaints from boaters, six and non-boaters, five. As can be seen from the case summaries below, non boaters are generally resident alongside the canal and have an issue with either the actions of the Trust or the actions of individuals using the waterway. Complaints from boaters were a mixture of topics, a couple related to mooring agreements and others to how the Trust has implemented its policies. There are a huge range of people and businesses who come into contact with the Trust, from people living close to the canal to people using allotments on Trust owned land. It makes the scope of my role much larger than that of the usual sector specific Ombudsman and keeps it interesting and fresh.

I record outcomes as upheld, partially upheld or not upheld. Of the eleven cases resolved seven of the complaints were partially upheld and the other four were not upheld. I did not uphold any of the complaints in full. In all seven cases which were partially upheld the criticism of the Trust was about the way they communicated or failed to communicate with the complainants before and in some case during the complaints process. As the complainant did not achieve the full resolution they wanted only three of the partially upheld complaints were accepted, the other four declined the report and any recommendations made. In total six complainants rejected the final report, one did not respond and five accepted.

### **Recommendations to the Trust**

I made a number of recommendations to the Trust which included; being clearer in relation to the Reasonable Adjustments appeals process; reviewing how its payment plans are processed to ensure that customers have confirmed their agreement to the plan recorded against their records; more transparency when changes are made to mooring agreements; ensuring all questions are answered in a timely manner; revisiting signage issues at a particular site to alert boaters to possible hazards and avoiding collisions; considering advising residents in close proximity to planned building work before beginning work, to alert the Trust to any local issues, peculiarities to the location and allow the local residents a route into the Trust to raise their concerns to avoid any confrontations between residents and the workman, who may not be empowered to make changes or comment.





## **Time taken to complete investigations**

Under the ADR Regulations<sup>1</sup> the Ombudsman is 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 the Complete Case File (CCF) is received, 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 the final report is issued, having in most cases previously issued a draft report on which both parties had the opportunity to comment. The time line includes response times from both sides.

At the outset of the investigation, it is not always clear what information is required and as the investigation progresses sometimes more information is needed. This can sometimes mean that complaints take longer than expected to resolve. This year two cases exceeded the 90 day deadline, one was a business customer and the other was because the complainant requested more time to respond to the draft report.

The remaining nine cases were closed in a range of days from 35 to 90 with the average of these being 61.5 days from CCF to final decision.

The time taken to resolve cases has increased this year for a variety of reasons, including customers requesting extensions, delays in getting additional information and changes to the processes used in investigating cases. I work on the basis that the important thing is to make sure all information has been considered and both sides have had an opportunity to present all their evidence. It remains true that the time it takes to get the correct information dictates the time taken to complete an investigation.

## **Eligible cases for investigation which were completed during the year 2021-22**

The case summaries for all investigations are published on the scheme website when the complaint process is complete. The aim is to provide examples of the types of complaint which can be investigated, to aid an understanding of how they might be investigated and highlight areas where changes have been made.

This year's cases covered a wide variety of topics. The Trust covers a huge array of areas and touches the lives of many living on or by the waterways.

The list below provides a headline description of the complaint. The full summaries are available to read in the report appendix or on the websites, [here](#).

### **List of investigated cases**

**Case 1227** A complaint from a boater in central London about the Trust's support for and licencing of a company which provides leisure hire boats.

**Case 1228** A complaint from a canal side resident about a newly installed automatic barrier for a swing bridge across the canal.

**Case 1231** A complaint about overstaying boats causing a nuisance to residents living alongside a stretch of the Grand Union canal, particularly regarding smoke.

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<sup>1</sup> <http://www.legislation.gov.uk/uksi/2015/542/contents/made>



**Case 1186** A complaint about the Trust's response to a request for payment to cover the cost of increased home insurance premiums because of flooding of a home.

**Case 1202** A complaint about the requirements to continually cruise for a boat without a home mooring licence.

**Case 1210** A complaint from a boater about an unexplained change to his mooring agreement.

**Case 1193** A complaint about the handling of payment plans for licences without a Direct Debit.

**Case 1171** A complaint about who is responsible for dredging a mooring at a Cruising Club.

**Case 1173** A complaint about flooding at allotments.

**Case 1169** A complaint about the selection of candidates to a training course to become a Boat Safety Examiner.

**Case 1153** A complaint about the Trust's Equality Policy and the means of assessing a reasonable adjustment.

## **Timescales and Key Performance Indicators**

I met all the timescales and key performance indicators set by the Committee for responding to correspondence and dealing with complaints. They are,

- acknowledgement or response to initial letter, email or telephone call within a week of contact in 90% of cases,
- confirmation of whether the complaint is within jurisdiction and has fully completed the complaints process of the organisation complained about within a week of contact in 90% of cases,
- investigations completed within 90 days of the Ombudsman receiving the complete complaint file (except for cases of a highly complex nature).

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

Of the seven complaints which were partially upheld, three were accepted and the Trust was required to take some further action. All the remedies were fulfilled in the permitted timeframe.



## My reflections



As this year marks the ten-year anniversary of the Canal & River Trust becoming a charity, I looked back at the complaint numbers ten years ago. In 2011-12 the Ombudsman completed 16 investigations with similar issues and outcomes as today. Amazingly she also had 63 enquiries with a comparable breakdown to the ones I dealt with. This demonstrates that whatever changes are made to systems and process the level of complaints remains fairly constant. There will always be complainants who remain dissatisfied with their interactions with the Trust and who wish to have an independent review of events as they unfolded.

Progressing a complaint to Ombudsman level takes time and effort from the

complainant and a degree of determination which should not be underestimated. It can be time consuming and stressful, despite the best efforts of the complaint handling teams and myself to make it a straightforward process. Whatever the eventual outcome there are almost always learning opportunities for the Trust, with the chance to review processes and procedures and to see where improvements can be made. So, as well as thanking the Trust staff for their help and expertise in providing detailed information to assist in the investigation I also record my thanks to the individuals who have taken the time to raise these complaints and put their side of the story forward so the Trust are made aware of the problems encountered and can continue to look for areas to improve.

When considering the number of people who access the waterways for business, leisure or their home, complaint numbers are very low. The Trust invests a great deal of time and effort in providing a good customer service and its new customer relations system appears to be enhancing the customer experience by keeping a tighter view on individual complaints. I have noted a slight delay in second level responses mainly due to staff shortages caused by the pandemic, but I have remained impressed with the high level of investigation conducted by the Trust at the first and second level of their process and by the work of the National Complaints Coordinator who keeps the complaints flowing and quality checked. Complainants may not always agree with the decisions I make but I hope they feel they have had their complaint heard and have a better understanding of the actions of the Trust.

We continue to be open to the prospect of new Members joining the Scheme. Joining an established Ombudsman scheme shows a commitment to providing a high standard of customer service and a willingness to learn from complaints to improve performance.

I'd like to record my thanks to Claire Stokes and Stella Ridgeway for their valuable contribution to the Committee over the last year.

Sarah Daniel  
Waterways Ombudsman June 2022



## Case Summaries

Available to view on the website at,

[2021-2022 case summaries | The Waterways Ombudsman \(waterways-ombudsman.org\)](https://waterways-ombudsman.org)

### **Case 1227 A complaint from a boater in central London about the Trust's support for and licencing of the company which provides leisure hire boats.**

Mr B complains that the users of the small hire boats are reckless and have caused damage to his boat and are a danger to themselves and others. He is unhappy that the Trust should provide a business licence to the company, which he says does not do enough to protect his boat from collisions. The Trust says it has done a lot of work to improve standards and had assurances from the business that it is taking actions to ensure safety for all. Some of the issues raised were outside the remit of the Ombudsman, an insurance claim and provision of a fender. Mr B was advised to continue to work with the business to resolve these issues.

I concluded that the Trust had followed process in approving the Business Boat licence to the company and had demonstrated that the business meets all the licence conditions and is proactive in dealing with complaints. I was satisfied from the information provided to me that the Trust has acted responsibly and in line with its usual processes and procedures in issuing the licence and in dealing with complaints raised by customers.

I recommended the Trust revisit the signage provided along the canal bank and consider if there is any signage it could provide that would help to alert users to possible hazards and avoiding collisions. And that the Trust request that in line with 11.3 of its licence conditions that the business ensure that all potential skippers of the boats are trained and can demonstrate competence. Users should then be advised that only people who have completed the training and have demonstrated competence can skipper the hire boats. If others are steering when there is a collision, the nominated skipper may be liable for damages.

### **Case 1228 A complaint from a canal side resident about a newly installed automatic barrier for a swing bridge across the canal.**

Mrs C lives next to a small swing bridge over the canal. The Trust undertook works to improve the safety of the bridge by installing automatic barriers and wig wag lights. Mrs C complains the new equipment is unsightly, the barriers are dangerous, and she has lost access to her garden. The Trust says it has worked hard with all parties to reach a resolution and that some of the elements of the complaint are outside its remit.

I was satisfied with the Trust's explanation for the position of two steel cabinets, that it had the right to install a locked gate which prohibits general public access to the canal side of Mrs C's home and that the installation of the wig-wag on Highway's land has been explained and retrospective permission has been provided.

I made a number of recommendations that the customer and the Trust work together to resolve outstanding issues regarding the visual impact of the installation I

recommended that in future project work, where householders are in such close proximity to the site, the Trust consider advising of planned work beforehand, much as they would have to do if they required planning permission. This would help to alert the Trust to any local issues, peculiarities to the location and allow the residents a route into the Trust to raise their concerns to avoid any confrontations between residents and the workman, who may not be empowered to make changes or comment.

**Case 1231 A complaint about overstaying boats causing a nuisance to residents living alongside a stretch of the Grand Union canal, particularly regarding smoke.**

Mr D would like the Trust to change its mooring policy on this stretch from 14 days to 48 hours as he believes that would alleviate the situation as continuous cruisers will be obliged to move on. He argues the offending boats would, or should, if patrolled properly move on in a much smaller time frame and this anti-social practice would be reduced. He also complained that wide beam boats are now collecting on this stretch and when mooring adjacent to his boat are causing a restriction in width whereby his boat is being hit.

I was satisfied that the Trust was taking action to remedy the situation, with the provision of signage and recruitment of a Boat Support Licence Officer. It is also committed to working with Mr D and the local enforcement officer at the council to monitor the smoke problem and take action as required. As the Trust has no enforcement powers it is restricted in its actions regarding smoke pollution, although anti-social behaviour can be addressed via the boat licence conditions and I said I would expect the Trust to act on any complaints it receives in that regard.

The Trust demonstrated it had followed its procedure for considering the change of mooring request but had declined to make the change, explaining it is not in line with its policy to limit such areas to 48-hour mooring. I was not persuaded there has been any maladministration in the making of this decision. The Trust was satisfied there is sufficient width at this point in the canal to allow the safe passage of boats and if Mr D had any evidence of his boat being hit he should report that to the Trust and if there is damage he should make a claim against the boater via his insurance. I concluded the Trust had taken the complaint seriously and completed a thorough investigation. It has initiated some actions which will hopefully help and has considered but declined the request to reduce the mooring time limit. I am satisfied it has provided a robust explanation for its decision. I made no recommendations.

**Case 1186 A complaint about the Trust's response to a request for payment to cover the cost of increased home insurance premiums because of flooding of a home.**

Mr A explained that his home was flooded, he holds the Trust responsible for that. He accepted there had been a huge amount of rainfall on the day in question but believes the delay in opening the lock gate paddles near his home allowed the canal to overtop which resulted in the flood. He said the final response he received showed the Trust had a lot of data available regarding the level of rain fall and the height of the canal water. He felt that had they used this data to inform the decision to open the lock gate paddles sooner, the whole thing would have been avoided.

As a resolution to the complaint, Mr A would like the Trust to make an award of £3,500. He explained this represented the increase in his home insurance premiums, which are now around £350 a year more than they were previously. He said as his previous insurer asked if the home has been flooded in the last 10 years, he calculated he would be £3,500 out of pocket over the next 10 years.



The Trust said it had taken actions on the night to manage the impacts of the heavy rainfall with all the resources it had available. It said these decisions were based upon the meteorological information it was aware of and data from its own monitoring systems. It said opening the paddles in question would have meant another action was not carried out and so it is not as simple to say that the impact in one location would have been avoided by taking a different course of action, as the knock on effect of not delivering the other action could have made the problem worse. It says it aimed to take the overall best course of actions, and it is comfortable it did that. The Trust said the modelling required to reach a definitive conclusion on alternative courses of actions would be extensive and it simply does not have the resources required to do this.

Having considered all the information I was satisfied that, on the balance of probabilities, the Trust could not be shown to be responsible for the flooding which occurred in the area that night. It acted on the information available to it from its data collection and other agencies on the night and has demonstrated that it had acted in the preceding days to manage the water levels in the canal in anticipation of the storm. I accepted Mr A's insurance premiums had increased, but I had not been persuaded there was a direct correlation between this and the opening of the lock gates that night. The information from a government website indicated his home is in a high-risk area for floods from surface water, which are not necessarily linked to the canal.

I did identify areas of the Trust's complaint handling which could have been better and could be improved. There were questions asked by Mr A which were not answered until this investigation asked. Had they been answered sooner they may have negated this investigation. For that I recommended the Trust apologise and make a goodwill award to recognise the inconvenience caused to Mr A in making this complaint.





## **Case 1202 A complaint about the requirements to continually cruise for a boat without a home mooring licence.**

Mr T was aggrieved he had been sent a letter advising that because of concerns about his cruising pattern but for the National lockdowns, which meant that 12 month licences were being granted, he would have only been offered a 6 month licence on renewal. In normal circumstances he would then have had the 6 months to demonstrate compliance with the continuous cruising requirements. Mr T argued that he had always acted in line with the Trust's published guidelines, Boater's Handbook and Terms and Conditions and had completed many miles of navigation in the year. The Trust accepted he had completed an initial long journey but that its recorded sightings indicated that after that he had predominately stayed in the same locality. They said he appeared to be shuttling back and forth on a small stretch of the same waterway, rather than being engaged in genuine navigation throughout the network. Mr T said he had moved between neighbourhoods in line with guidance, not stayed longer than 14 nights in a single spot and that trips made were missing from the Trust's sightings.

The Trust maintained that, even with the additional trips included, the cruising pattern did not demonstrate he was engaged in genuine navigation throughout the period of the licence and was not making a progressive journey throughout the network.

There were delays in the Trust's complaints responses, which I recommended it should apologise for, and some initial information provided which may have mis-led Mr T about the requirements. I agreed with Mr T that a general letter issued about cruising patterns should not be considered an individual warning letter.

I concluded that the Trust had acted in line with its policies and procedures and with the guidance it provides. The Trust has now removed some of the wording on its website FAQs referring to 20 miles or more of cruising being expected in case this was causing some confusion.

## **Case 1210 A complaint from a boater about an unexplained change to his mooring agreement.**

Mr X purchased a 50-foot mooring in 2014 on a three year term. He renewed it annually for the next three years and presumed it was on the same basis. However, in 2017, because of the way the Trust's accounting system was set up, the size of the mooring was reduced to the size of the boat, 32-foot. Mr X was unaware this had happened, although the price reduced significantly, he was not given anything to advise him this was because of the size reduction.

In mid-2020, when Mr X struggled to get back into his mooring, because of boats moored either side, he was advised that he was only paying for a 32-foot mooring. He complained that the Trust had not complied with its requirements to advise him of a change to his mooring agreement and so he should not have to bear the increased costs incurred when bidding on a new 50-foot mooring.

The Trust explained it was standard practise at the time, June 2017, to revert from an agreement based on the length of the mooring to one based on the length of the craft. Although they do now continue to offer the original length of the mooring space in subsequent renewals.

The terms and conditions in place during the initial mooring agreement 2014-2017, did not include a requirement for the Trust to provide 6 weeks notice of a change. When Mr X signed a new agreement in 2017, he agreed to the new terms and conditions which did include the requirement to provide 6 weeks notice of a change to the mooring agreement. I agree it could be argued that the Trust should have given 6 weeks notice

that both the length of his mooring and the price he was paying would be reduced at renewal. However, as he accepted the terms of the renewal by paying the lower mooring rate and remaining on the mooring for over 4 years after the renewal in 2017, he effectively waived any right to a contractual remedy arising from the Trust not giving him the 6 weeks' notice. In technical contractual law terms, he would be 'estopped' from relying on this in terms of bringing an action for breach of contract and seeking any damages (in the form of the reimbursement of mooring rates since 2017 or compensation). I also noted that at his subsequent renewal in 2020, the terms did not change and so the Trust would not have been required to give him 6 weeks notice at this point, so any breach is purely historic relating to a former mooring agreement period.

I concluded that, for a variety of reasons, Mr X had not known about the change and there had been a lack of transparency in the Trust's actions. Mr X was unaware and unaffected by this for three years, having full use of the larger mooring at a reduced rate, that is he was occupying a 50 foot berth but paying for a 32 foot one. When he became aware he asked the Mooring manager to immediately accommodate him with the same or a new mooring of the size he required. Although this was not immediately possible Mr X was offered but rejected a cheaper berth that would soon be available. Mr X says he felt compelled to bid on a new berth, which was considerably more expensive than the one he had, and he wished the Trust to cover these costs.

I concluded it would not be fair and reasonable to make an award that covered all his increased costs. It was his decision to bid the price he did at auction and to pay the higher cost with nothing from the Trust to confirm it would pay his costs. I did recommend a goodwill gesture to recognise the issues faced and inconvenience caused.

#### **Case 1193 A complaint about the handling of payment plans for licences without a Direct Debit.**

Mr Q and Mrs R complained about problems faced over several years which stemmed from an early payment of their licence fee being placed on the previous years' account. The Trust responded to the points raised but the couple remained unhappy with several elements including, the action of one individual, the incorrect recording of their address, the use of county court summons, the length of time taken to resolve matters and what they alleged was a cover up and avoidance of answers.

The couple requested recompense to recognise the years of ongoing stress, worry and ongoing anxiety and their constant frustration of being refused telephone contact with the local office. The complaint started with an early payment in June 2016 and the final response was issued in August 2020.

The Trust has several ways customers can pay for boat licences, but Mr Q did not want to use them and so a special arrangement was made for him to pay £100 each month. Unfortunately, there was a difference of opinion on the start date of the arrangement in 2016 and opportunities to identify the cause of this and put things right were missed. With the benefit of hindsight, it is easy to look back and spot the point where things went wrong, but at the time it appeared to the Trust the account was in arrears, and it followed process to recover the arrears.

There were also opportunities for Mr Q to spot the error and seek to remedy the matter. He was sent a copy of the payment plan which set out the due dates for payment which were explained again in a telephone call. Mr Q has tried to resolve things, he met with the local boat support officer to discuss the issues, but it does not appear that information was passed back to the credit control team to alert them to the issue. To compound the problem there were discrepancies with the customers address which



were not properly explained and an issue when he received correspondence for another boat. There were also payment issues the following year despite a Direct Debit being set up.

The matter has been unresolved for some years and there have been some delays in the Trust meeting its deadline for responses. There also appears to have been times when there has been no activity at all. The Trust says it has taken the learnings from this complaint and looked to make improvements in its procedures to prevent any recurrences. Mr Q is seeking accountability at the Trust for actions taken, this is an internal matter for the Trust and would form part of the process improvement work it has agreed to undertake.

I have not been provided with any evidence from the couple to make an award for direct or consequential losses so I considered an award for distress and inconvenience only. I do have sympathy for the frustrations experienced by the couple, but I have nothing to support an award of the size requested. I have seen opportunities when both sides could have taken the time to understand what had happened and prevent the matter snowballing. I have seen no evidence that this was any kind of vendetta by Trust staff against the couple and while I appreciate, they describe being embarrassed while using the canal network, as they were not able to display a licence, I did not consider that merited an award of the amount requested.

Following my investigation, I concluded there were opportunities when both sides could have worked better together to understand the root cause of the problem and prevent the matter escalating. The Trust says that it has learnt lessons and a review of the way they work is to be conducted, which is welcomed.

I recommended the Trust make a medium sized award to Mr Q and to Mrs R as a goodwill gesture and that it reviews how its payment plans are processed to ensure that customers have confirmed their agreement to the plan recorded against their records.





## **Case 1171 A complaint about who is responsible for dredging a mooring at a Cruising Club.**

The Cruising Club has been complaining since April 2018 about the lack of water depth on its moorings. It said that British Waterways Board (BWB) previously dredged the mooring, but they had not been dredged for over 22 years. The lease agreement did not include any details as to which party was responsible for dredging and there was nothing to compel the Trust to finance the cost of the work. I concluded as there is no recorded liability for the dredging the onus will fall to the party which requires the dredging to finance it.

The Trust argued that the Club should have told the Trust about the need for dredging when it consulted widely on the Dredging Programme in 2018. The Club believed the Trust was aware of the issue before the 2018 consultation and should have included the area in the programme. I concluded that even if the area had been included in the consultation there is nothing to guarantee it would have dredged, resources are limited, and the Trust would have had to consider where dredging was most needed at that time.

The Club do not believe the Trust is treating it fairly. They are negotiating a new lease with the Trust, which is a separate issue, which gives it the right to moor boats on the offside but if the silt is not cleared it will be paying for a facility which is becoming difficult to use and is a significant part of its income. The general rule for the Trust is that where there is a commercial agreement in place, they do not dredge under moorings, unless they have already agreed to do so within the contract covering them, which they have not in this case.

The Club consider that refusal to dredge the area and implying they have no responsibility is an act of deliberate neglect by the Trust which could affect the viability of the Club in the future. The Club says it has worked hard over the last 50 years to restore the site and boating facility and is being treated unfairly and with disrespect. The Trust acknowledge the contribution the Club has made to the area, and therefore it has tried to explore opportunities to assist it. The Trust has to be mindful there are many Cruising and similar Clubs within its network, and each should be treated in the same way, if the lease does not stipulate who is responsible for the dredging it does not fall that the Trust should be the party to bear the cost.

As a resolution the Club says it would like the Trust to take responsibility for dredging the area, as BWB always did, to enable the Club to operate. They say they expect the Trust to honour its part of the lease and ensure the mooring are fit for purpose. The lease puts no such requirement on the Trust and so I could not require that it fund the cost of the dredging.

I did make some recommendations that the Trust should explore the potential cost of completing the dredging work required at the moorings by getting quotes from two certified contractors as it had already planned to do. When the information is available, they should inform the Club so it can make an informed decision of how it wishes to proceed. This should happen within two months of acceptance of the final decision and before the lease negotiations begin.

The Trust had already suggested it should support the Club in the best way it can by waiving any costs in relation to its own work in providing technical assistance in the developing of the project and waiving its standard fees for third party work carried out on its land. I recommended this happen and that the Trust should apologise for the delays in dealing with this issue particularly during the early stages when documents were lost, and contacts were not followed up.



### **Case 1173 A complaint about flooding at allotments.**

Mr S has an allotment at a location which is leased from the Trust. In February 2021, the allotments flooded, and Mr S contacted the Trust to request some action to inspect the allotments and propose actions to remedy the situation. He complains the allotments remained unusable and the Trust did nothing to assist him. As a resolution to the complaint Mr S wants the flooding problems at the allotments to be resolved so they can be fully used, an explanation of the poor customer service he has experienced and an apology for the delays in dealing with this issue.

The Trust has explained to Mr S that, although he is a user of the allotments, he is not the leaseholder. A copy of the lease was provided which expressly states the leaseholder is "*to take the land in its current state on the understanding the Trust will not be liable for its condition or any work thereto*". The Trust has explained that before entering the lease arrangement with the Trust, the leaseholder noted in writing, that the site floods and had discussed this with the Trust, noting the role of the Environment Agency in managing flood risk. The Trust has taken the view that the leaseholder was aware of the risk of flooding to the site and that no specific obligation on the Trust to maintain the site should be expected by them, and therefore nor by any of the users of the allotments.

The allotments are in an area prone to flooding, all parties are aware of this. The Trust has limited resources and when areas flood it must decide where best to use that resource to avoid any risk to life, to protect properties and livelihoods. I consider it inevitable that allotments would not be high on the priority list. The Trust does not consider there is a need to carry out any work at the allotment and that flooding is to be expected, because of the location. The Trust has provided the leaseholder of the allotments with a refund of the rent for the year affected as a gesture of goodwill, even though the Trust is not contractually obliged to do so. The Trust has apologised for its poor customer service, which is somewhat explained by the frequency of contact and unachievable expectations of Mr S and has apologised for this. It has reported that individual failures which were highlighted have been dealt with internally.

I upheld Mr S's complaint that his contacts were not handled as well as should be expected and recommend the Trust apologises for that. I did not uphold the complaint that the Trust failed to take any action to remedy the flooding at the allotments to make them useable. The flooding is a natural occurrence, because of the location in low lying flood area, the Trust is not responsible for this.

### **Case 1169 A complaint about the selection of candidates to a training course to become a Boat Safety Examiner.**

Mr P complains that, in its capacity as a training provider the BSS Office is anti-competitive, manipulating the marketplace of Boat Safety Examiners by only allowing people to qualify if they live in a certain area and that the cost of the Examiners training course is excessive, and the high cost is being used to discourage applicants, and the cost of 'Professional' as per the published accounts is disproportionate to the operation and you request clarification.

Mr P considers the inclusion of geographic location into the selection criteria of the course to be unfair for all applicants. He argues that as the BSS is totally dominant in this marketplace, it is disadvantaging applicants by applying a criteria that is unnecessary for a place on a training course. Mr P says he understood he had been accepted for a place on the course in 2015 and began to prepare for that role. In 2020 he was told that he would not be accepted on the next available course because where he lived was not a priority area for examiners.

Mr P argues, since he had previously been accepted on training courses, he should not have had to go through a selection process. The BSS has explained that from 2016 onwards the course was being redesigned. When the new format had been agreed it was fundamentally different in structure, content and cost and places were limited. Therefore, due to a high demand for limited places candidates were invited to complete a two-stage application refreshing the information they had previously provided. I was satisfied that, when a course was eventually available it was fair and reasonable to all candidates that they were all asked to re-apply. I do not accept Mr P's argument that he had already been accepted and so should be exempt from this process. Mr P says he has no objection to reapplying but does not consider the method employed was fair.

The Trust explained that due to the withdrawals of existing examiners, the geographic criteria was important to ensure that the customers of the various navigation authorities can have an examiner within a reasonable distance of their boats. The BSS serves 14 Navigation Authorities across England and Wales and I agreed it made sense to ensure that those authorities have sufficient examiners for their needs. As the likelihood is that an applicant from a particular area will, once qualified, wish to remain and work in that area it seems to be a pragmatic decision to consider location when assigning the places on the course. I do not criticise the BSS for including the criteria as part of its selection process for the course. It was not the definitive criteria, rather it was one of several criteria to be taken into account.

I was provided with a detailed but confidential breakdown of how the process of selection was conducted by the external contractor. It demonstrated a fair and robust process was used which weighted applicants against a competency and then looked at CVs. Candidates were graded with an A if they had the qualifications and appropriate length and type of experience. Only following the grading process was the issue of location applied. On this basis I am satisfied that the reason Mr P's application did not make the top 50 list was not because of his location but because of his experience and skills. Therefore, the decision to include location as a criteria for course selection did not disadvantage Mr P. I do not find that the BSS has a geographical bar and I do not uphold his complaint.

Mr P's second complaint is that the cost of the Examiners training course is excessive, and the high cost is being used to discourage applicants, and the cost of 'Professional' as per the published accounts is disproportionate to the operation and he requests clarification.

Mr P compared the cost of the course with other vocational courses. In its response to me the Trust has looked at the costs of other courses which when fully tallied up for a complete qualification are similar costs. The Trust has also provided a breakdown of how the costs of this course are made up which show it is carefully costed. General information explaining what the course involves is also available on the BSS website and shows the course includes two one-week courses as well as other day long events, online learning and ongoing support. I do not find any evidence that the cost of the course is excessive or there is a deliberate policy to restrict applicants by pricing it too high.

Mr P also queried a figure in the BSS accounts, published results for 2018/19. The Trust told me the accounts published on the BSS website are audited accounts. The level of detailed breakdown published externally is in line with what is prescribed by the Trust. This is commercially sensitive information and consequentially no further breakdown is available to Mr P, even under the Freedom of Information Act.

The Trust has already apologised for the delays Mr P has experienced from his first request to register for a place on the BSS examiner course. It has taken a considerable

time and I can appreciate this has been very frustrating for him. Although there have been occasional updates and requests to re-register the actual courses have not run.

The BSS has taken some time to ensure that the new course will meet all its requirements and needs. While I acknowledged the waiting time has been a frustrating period for Mr P I found no evidence to substantiate his allegations that he has been treated unfairly or there has been any maladministration in the course selection process which has disadvantaged him. There were simply better qualified candidates for the role. In relation to the cost of the course and other financial question I found no evidence of irregularity and did not uphold Mr P's complaints.

### **Case 1153 A complaint about the Trust's Equality Policy and the means of assessing a reasonable adjustment.**

Mr Q has a continuous cruising licence and complains the Trust, though aware of his disability, insisted that he move his boat. He thinks it is not fair and reasonable and goes against the Trust's Equality Policy and possibly the Equality Act. He complains about the Trust's use of an Equality Questionnaire to gather information on ongoing medical conditions and disabilities. He says the Trust does not understand it has a responsibility to provide proper disabled facilities, including providing proper disabled ramps and pontoons. He believes it is against the Equality Act and its own policy to try and make him move without providing the proper facilities which he can use. He explains he needs good access not only to the boat but to his car.

In 2017, Mr Q developed health problems which have left him registered disabled and using crutches. It became increasingly difficult to adhere to the Continuous Cruising policy and so he applied for a reasonable adjustment to allow him some leeway. Since then, Mr Q has raised several issues with the Trust about its Equality policy, the way it operates the policy and the facilities it has available to its disabled users. This complaint arose following a culmination of issues and his belief that the Trust had not accurately assessed his needs when deciding on a level of reasonable adjustment.

Boaters without a Home Mooring are required to be engaged in genuine navigation throughout the period of the licence, that is, moving from place to place over a total range of 20 miles or more. The boat must not stay moored in the same neighbourhood or locality for more than 14 days and it is the boater's responsibility to satisfy the Trust they are meeting these requirements. Requests to differ from these rules because of disability are covered in the Trust's Equality Policy for Customer Service Delivery. The section headed, Adjustments to our Guidance for Boats without a Home Mooring says the Trust may carry out an assessment of the disability and the impacts on compliance with its guidance and may involve a face-to-face interview. It sets out the factors which may be relevant and examples of the reasonable adjustments it may offer.

The assessment begins with the completion by the boater of an Equality Questionnaire. This gathers information about how the physical and mental health of the respondent affects their abilities to use their boat. Once completed the information is reviewed centrally and in the strictest confidence by an independent internal group, which the Trust says may include welfare, boating and legal colleagues.

There is no dispute that Mr Q is disabled and requires a reasonable adjustment to his cruising pattern. He says the adjustment made demonstrates the people on the panel do not understand his circumstances or chose to ignore them, nobody from the panel had a discussion with him before deciding the adjustment and that it does not take account of the fact there are no suitable facilities for him, as he is on crutches, he cannot move during the winter months. He believes the equality questionnaire is not a proper way to assess his circumstances and has had an unfair impact on him.



The Trust notified Mr Q of what it considered a suitable reasonable adjustment. It was to remain at one location for periods of 28 days and at another for periods of 7 days and 16 kilometres distance of travel. Mr Q argues he did not accept this and that he made it clear that he is unable to adhere to the modified rules. The Trust says there was implicit agreement in his responses to the Trust and in telephone calls and emails. Having reviewed the evidence, I was satisfied it was reasonable for the Trust to believe Mr Q had accepted the reasonable adjustments from July 2019 onwards.

Mr Q did not feel able to comply with these requirements. He moved once in the two year period, to empty his water tank, after making specific arrangements with the Trust to reserve a mooring for his return. The journey was difficult and did not go to plan. Mr Q's argument is that, by not providing the facilities he needs at other locations he has effectively been trapped and unable to move. He says the Trust should be able to accommodate the needs of all boaters, including those who, like him, are unable to cruise.

The Trust advised it cannot agree to a reasonable adjustment which allows for no movement since that would contravene the British Waterways Act 1995 section 17. It has an obligation to manage the waterway, ecological and hydrological reasons as well as considering if there would be a need for residential planning permission. The Trust has provided evidence of emails and notes of conversations with Mr Q that demonstrate it has tried to accommodate his needs taking account of his disabilities.

When the Trust noted Mr Q's boat had not moved in line with the adjustment, they contacted him to ask why and if they could assist. Mr Q says he did not refuse to comply with the adjustment he was unable to.

Overall, I did not uphold Mr Q's complaint that he has been disadvantaged by the Trust's Equality policy and processes. I was satisfied the Trust had tried to work with Mr Q by offering support to move or allowing him to remain in situ when he explained his circumstances. The people who contacted him were all working within their guidelines and adhering to policy and procedures. There was no evidence of bullying or harassment as Mr Q alleged.

Mr Q complained about the Equality Questionnaire. I was satisfied the questionnaire is a useful starting point and, when completed and combined with a discussion with the boater, if appropriate and considered necessary, should be sufficient to decide if a reasonable adjustment can be made. Mr Q believes the Trust have been negligent when dealing with his requests for a reasonable adjustment which is fair. The process is a two way agreement where both sides may have to compromise to reach an agreement on what is acceptable. It requires two way communication and the positive engagement of both parties to work well. Although Mr Q claims he has been disadvantaged by the reasonable adjustment set by the Trust, the reality is he did not comply with his side of the arrangement. He did not keep the relevant people at the Trust updated and he did not move his boat as set out in the reasonable adjustment. The fact that the Trust has not taken any enforcement action and has allowed Mr Q to remain in his desired location demonstrated it does work with the boater to help them remain on the water, rather than, as Mr Q alleges, it discriminates against them.

Mr Q raised issues related to the provision of facilities specifically for disabled boaters. These are policy decisions and so not within my remit.

Mr Q is seeking through the Ombudsman process to demonstrate that the Trust discriminates against disabled boaters because it has not provided sufficient facilities to allow him to continuously cruise the waterways. I have considered the specifics of Mr Q's circumstances and have found no evidence of this.



As to whether the Trust has shown a lack of understanding of disability issues, I have to say that there is no evidence from Mr Q's case that this is so. I do accept that he has genuine difficulties in managing his disability, and that he may be unable to do things which other people would take for granted. The Trust does have certain obligations in respect of people with disabilities, but those obligations are not limitless and it does not seem to me that the Trust has failed to do anything it could reasonably be expected to do, or that it has acted inappropriately. I have made some minor suggestions for changes to help improve the overall effectiveness of the process.

