



# THE WATERWAYS OMBUDSMAN



Annual Reports of

The Waterways Ombudsman Committee

and

The Waterways Ombudsman

2019-20





# Annual Reports of The Waterways Ombudsman Committee and The Waterways Ombudsman 2019-20

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# ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN COMMITTEE 2019-20

## 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 2019 to March 2020.

The Committee was very pleased to welcome Sarah Daniel as the new Waterways Ombudsman. I tell you a little more about various new recruits below and Sarah introduces herself in her separate report.

This year we have taken steps to update the Scheme rules to ensure we remain fit for purpose and able to respond to changes in Scheme membership. The new rules are in the final stages of drafting as we go to print and will be displayed on the website as soon as possible. One of the changes is to increase the membership of the committee to ensure we have a wider breadth of experience and knowledge to maintain effective oversight, to ensure that the meetings are quorate and to improve rotation thus retaining knowledge. Another change relates to the term of office; whereas an Independent Member can serve only two terms of three years, this has been amended to allow him/her to be able to serve up to a maximum of nine years if elected as Chair.

The Committee has increased its membership, recruiting two new Independent Members in December. Full details of the Independent Members and Observers of the Committee are available in the annex. From April 2020, another two Independent Members will join the committee to help with succession planning.

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 three committee meetings in this reporting period, in September, November 2019 and March 2020.

The Committee has a responsibility to ensure that the Scheme is effective. This year we have updated the Service Standards and a number of the policies and processes which are displayed on the website.

The website itself has been updated to ensure it is accessible to the visually impaired and we have updated the Information Management and Data Protection Policy and the Privacy and Cookies.

## **Finances**

The Committee appoints the Ombudsman and the Committee is funded by its waterway members to meet the costs of this service. All expenditure is authorised for payment by the Chair. 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 2019-2020 was £49,156.37. This is made up as:

Ombudsman pay: £43,782.61  
Ombudsman expenses: £5019.17  
Committee expenses: £354.59

The increase in the costs of pay from previous years is due to the transition period from April to July while Sarah was in a training period. Ombudsman expenses include the purchase of new equipment to facilitate home working and payment of annual membership fees, such as the Ombudsman Association, Chartered Trading Standards Institute, and Information Commissioners Office fees.

In May 2019, a new Service level agreement was signed in respect of the support and services provided to the Committee by the Canal and River Trust in respect of the scheme. It covers secretarial and administrative support, data protection, payment of the Ombudsman and indemnity of the Ombudsman and Committee.

## **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 appointments**

Following an open competition, the Committee appointed a new Waterways Ombudsman, Sarah Daniel. Sarah investigated all complaints made after 1 April 2019 and, after a period of training, she took on the full role when Andrew Walker retired on 28 July 2019.

An open competition was also held to recruit new Committee Members, as explained above, and we are pleased to welcome Alan Collins and Lisa Stallwood who bring a broad range of experience and knowledge to the role. As part of its succession planning the committee ran a further recruitment campaign in March 2020, which was successful in appointing two further independent Committee Members to start in April

2020. New members will complete an induction programme to help them become familiar with the scheme and its functions.

Throughout the year we have been working with the Trust to recruit a user representative as an Observer to the Committee. The appointment will become effective from, June 2020. The aim is to improve transparency and to offer additional perspectives to our deliberations.

## **New Business**

On 1 January, we welcomed the Avon Navigation Trust (ANT) to the Scheme. We will provide its river users with an independent final third level for complaints. Our Scheme will replace their previous arrangement where an Independent Trustee/Director was the final escalation point for complaints. ANT will appoint an Observer to our Committee. In this reporting period there have been no recorded complaints about ANT.

We continue to seek interest from other waterways, which are not part of a statutory Alternative Dispute Resolution Scheme, to join us to help provide a more coherent and user-friendly complaints resolution environment.

## **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.

In 2020 we will publish our new Scheme rules and continue to make improvements to the website to make it more accessible and user friendly.

A new risk register and another peer review are planned for 2020/21 and the Ombudsman will discuss those in greater detail in her report.

In February 2021 both Steve Harriott and I come to the end of our final terms of office and we will stand down. The recruitment of four new Independent Members and one User Observer has been concluded which leaves the Committee in excellent shape. The process for the election of the Chair designate is well underway and is expected to be concluded in Autumn 2020.

It has been a pleasure and a privilege to serve as Chair and I wish my successor, the Committee and the Ombudsman every success in the future.

A handwritten signature in black ink that reads "K. Fitzgerald". Below the signature is a long, horizontal, slightly wavy line.

Kevin Fitzgerald CMG  
Chair, Waterways Ombudsman Committee

## Committee members and their profiles.

The Committee members at the 31 March 2020 are:

### Independent Members

Kevin Fitzgerald [Chair of the Committee]  
Steve Harriott  
Karen McArthur  
Alan Collins  
Lisa Stallwood

### Observers from Canal & River Trust

Tom Deards  
Janet Hogben

## Member profiles of the Ombudsman Committee as at 31 March 2020

### Chair

#### Kevin Fitzgerald CMG



Kevin 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



Steve 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.20,000 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, Home

Connection Ltd (as Chair) and of Gravesend Churches Housing Association in Kent (as Chair). He writes widely on tenancy deposit issues and is keen to see the wider use of alternative dispute resolution to resolve consumer disputes.

### **Karen McArthur**



Karen 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 The Welsh Housing Regulator, London Travel Watch, as well as serving as a lay member for a number of regulatory bodies.

Karen 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.

### **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.

## Observers appointed by the Canal & River Trust

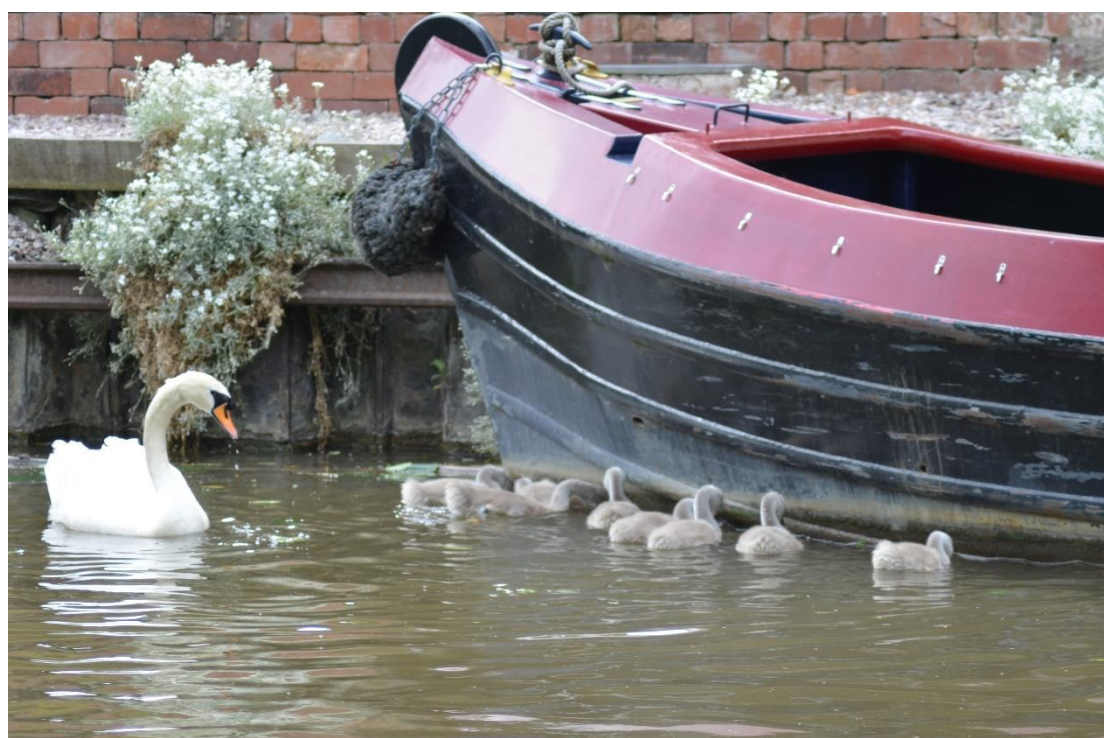
**Tom Deards** is the head of the Canal & River Trust's legal & governance services, and company secretary. He has responsibility for the legal and governance functions of the Trust. He is a qualified solicitor who joined the Trust's legal team in 2007, having trained and qualified into the asset finance 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.

## Attendance at meetings

Member	September 2019	November 2019	March 2020
Sarah Daniel	Green	Green	Green
Kevin Fitzgerald	Green	Green	Green
Steve Harriott	Green	Green	Red
Karen McArthur	Green	Red	Green
Alan Collins	White	White	Green
Lisa Stallwood	White	White	Green
Tom Deards	Green	Green	Green
Janet Hogben	Green	Red	Red

Key: attended Green; not attended red.





# ANNUAL REPORT THE WATERWAYS OMBUDSMAN 2019-20

## Welcome



This is my first annual report as Waterways Ombudsman and covers the period 1 April 2019 to 31 March 2020.

To achieve a smooth transition and to allow for a period of training my appointment started on 1 April and I investigated all complaints accepted after that date. My predecessor, Andrew Walker, officially retired on 28 July 2019, having concluded his open cases. I am grateful to Andrew for his advice and assistance and for passing the scheme on in a meticulously detailed and organised way.

Although new to the world of the waterways, I have many years of experience as an Ombudsman. This made the switch to the role straightforward in respect of complaint handling and allowed me to concentrate on the technicalities and specifics of the rules, processes, and procedures in place for the users of the waterways.

I have been impressed with the knowledge and dedication of the team at the Trust who have provided information when requested. They have explained the intricacies of their operation and pointed me in the right direction to examine the myriad of legislation and policies involved in keeping the waterways working.



## Numbers at a glance – 2020

Total initial contacts

**41**

Complaints resolved

**10**

Of the complaints resolved

**3** Partially Upheld

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

**6** 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.

**1** Settled

An agreement is reached between the complainant and the member, after the complaint came to the Ombudsman but prior to an investigation outcome.

How these contacts get in touch

**40%** Telephone

**60%** Email

**49%** of contacts were not in jurisdiction

**36%** of contacts were in jurisdiction but premature

**15%** of contacts were in jurisdiction

Key performance indicators (KPIs)

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

**40%** complaints resolved in under 8 weeks

**40%** complaints resolved in 8 to 12 weeks

**20%** complaints resolved in over 12 weeks

THE WATERWAYS  
**OMBUDSMAN**



## Casework

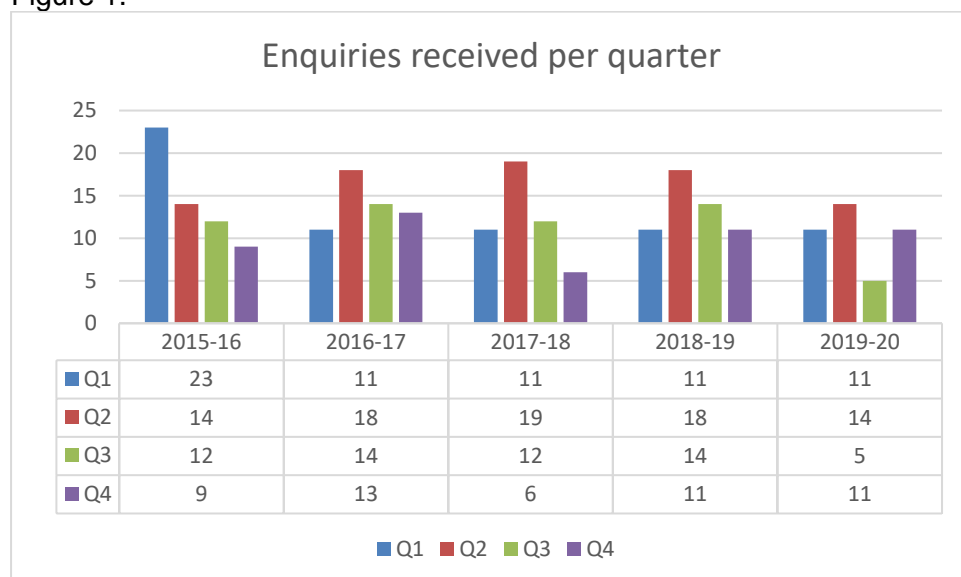
The major part of the Ombudsman’s role is casework. As Ombudsman, I am responsible for all aspects of the work, from the initial enquiry to the final decision. This makes the role very satisfying as I see the whole of the customer’s journey and can support them throughout. The work can be broadly divided into enquiries and investigations.

## Enquiries

An enquiry is any kind of approach, regardless of whether it is something which will result in an investigation. This year a total of 41 enquiries were received, 26 by email and 16 by telephone. Although a PO Box is available, the details of which are provided on the website, no enquiries were received by post and only two people used the postal service to provide further information. Despite the low usage and the relatively high cost of providing the PO Box, in the interests of accessibility, it remains in place.

Details of how to contact the Ombudsman are provided on the scheme website as well as in the complaints procedure of the member Trusts. Details are also readily available via an internet search.

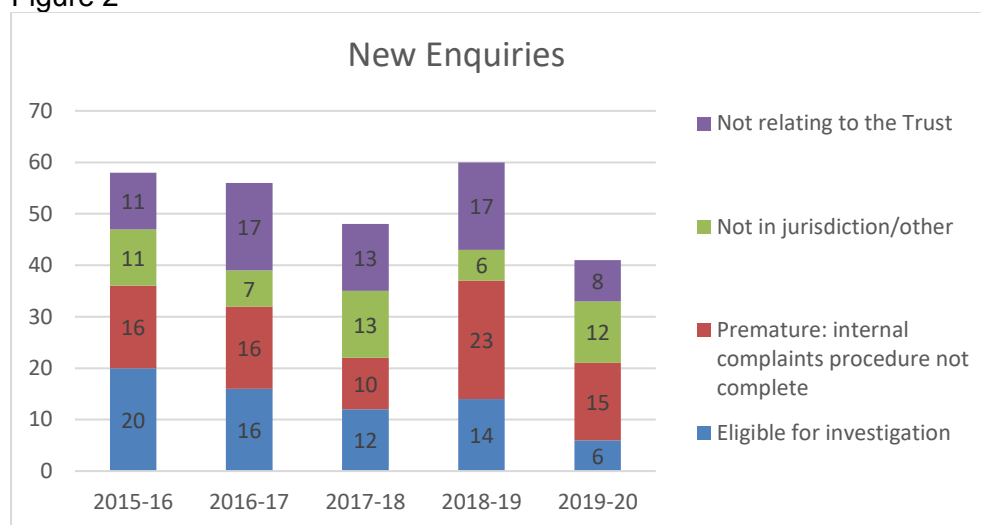
Figure 1.



There has been a reduction in the number of enquiries this year. This was particularly noticeable in November and December when I received only one enquiry. The Trust reported a similar, although not so severe, reduction in Quarter three, when they received the fewest complaints as shown in Figure 3.

## The enquiries fall into four groups.

Figure 2



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. Six of the 41 enquiries fall into this category. This group does include any complainants who, having first come prematurely, have subsequently returned before the end of the year and where an investigation has been opened. In all the cases which resulted in an investigation the complainant had been referred back to the ICP having approached the Ombudsman early.

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. 15 of the 41 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 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. 12 of the 41 enquiries fall into this category.

The final group, shown in purple, is those which are not about the Trust. Two were about British Waterways Marina Ltd, which was sold by the Trust last year and so no longer in jurisdiction, two were about other waterways and three about The Boat Safety Scheme which is not within the ombudsman's remit.

The number of enquiries potentially in jurisdiction has dropped from 23 to 15. It is interesting to briefly review the main types of enquiry. The presumption is that the Trust resolved the issues once alerted to them but there is no follow up on this.

There was just 1 enquiry about continuous cruising guidance, which is an improvement from last year. Six were about maintenance issues with either waterways or the areas surrounding them from people who lived next to Trust land. There was a complaint about a noisy bridge, three about end of garden issues, mooring, fishing and the behaviour of boaters, three about boat seizures and one about the behaviour of a Trust employee.

I categorised 12 enquiries as “not in jurisdiction/other”, which is twice as many as last year. Three of these were about legal or policy matters which are outside the Trust’s internal complaints policy and therefore outside the ombudsman remit, a couple were employee related and so prohibited by the scheme rules, the others were all issues which affected individuals but were not covered by the scheme rules.

Although numbers have always been low, they have been static which makes this reduction significant. This appears to be a result of a lower number of complaints entering the first level of the Trust’s Internal complaints procedure over the last two years. In reaction to the reduction last year the Trust had said they thought the drop was due to the change in management and that there may have been some under reporting of first level complaints. It appeared that second level complaints remained more stable and the percentage of cases which reached the Ombudsman from that point remained at around 40%.

This year the number of first level complaints has dropped again, although the percentage of second level to first level remained the same at 28%. It is the percentage that have progressed to the ombudsman which has dropped from a stable 40% to 22%. The lack of new Ombudsman cases in quarter 3 is striking and reflects the drop in enquiries received that quarter.

The Trust has completed a lot of work to ensure that it has visibility of complaints and they are carefully monitored as they pass through the process. Complaint handling training has been provided to a pool of senior, middle and technical managers to enable them to review these complaints. The training placed a focus on best practise and resolution and on average (except where there were related complaints about the same matters) each manager reviewed no more than two complaints in a 12 month period. The Trust said this was to allow managers to come to their investigation fresh and keen with enough capacity in their workload to do their review justice and without any complacency that comes with overfamiliarity.

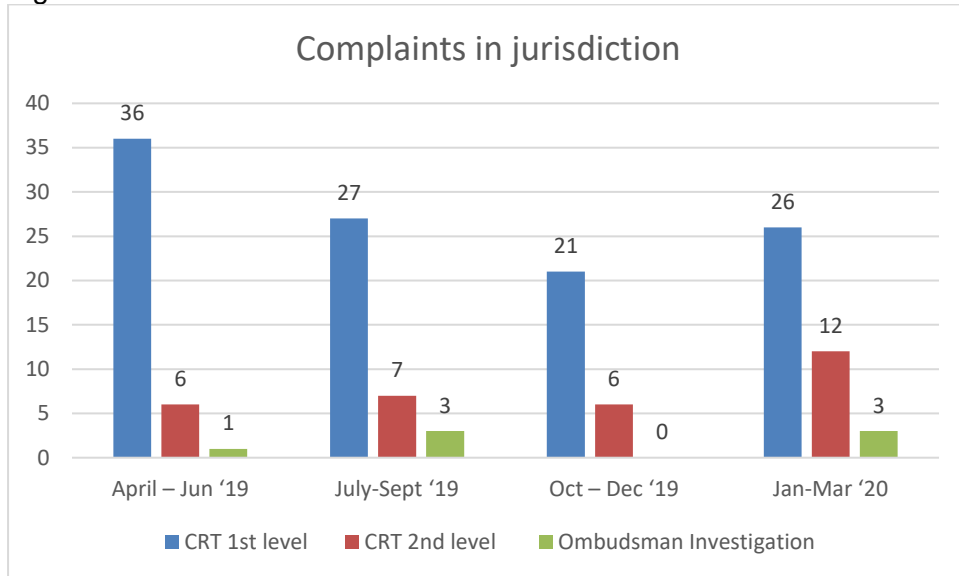
It is clear from the complaints I have reviewed that the standard of the investigation and the associated letters is high and matters are given due consideration. This has been coupled with a change in focus at the first indication of a complaint, with the onus being on the first responder to deal with the issue so it does not escalate.

It seems likely that this explains the reduction in new cases to the ombudsman and the Trust should be given credit for investing in its internal complaints handling procedure.

Figure 3

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

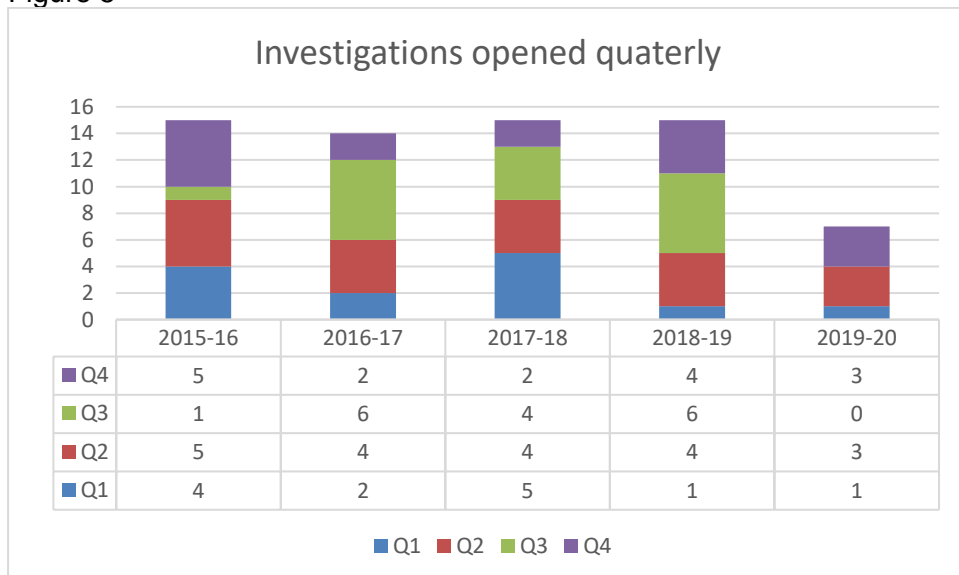
Figure 4



## Investigations

This year I opened seven new investigations and closed six. There were four investigations open at the start of the year, which Andrew completed. The one that remained open was closed the following month. The chart below, Figure 5, shows the breakdown by quarter of when investigations were opened for the past five years.

Figure 5



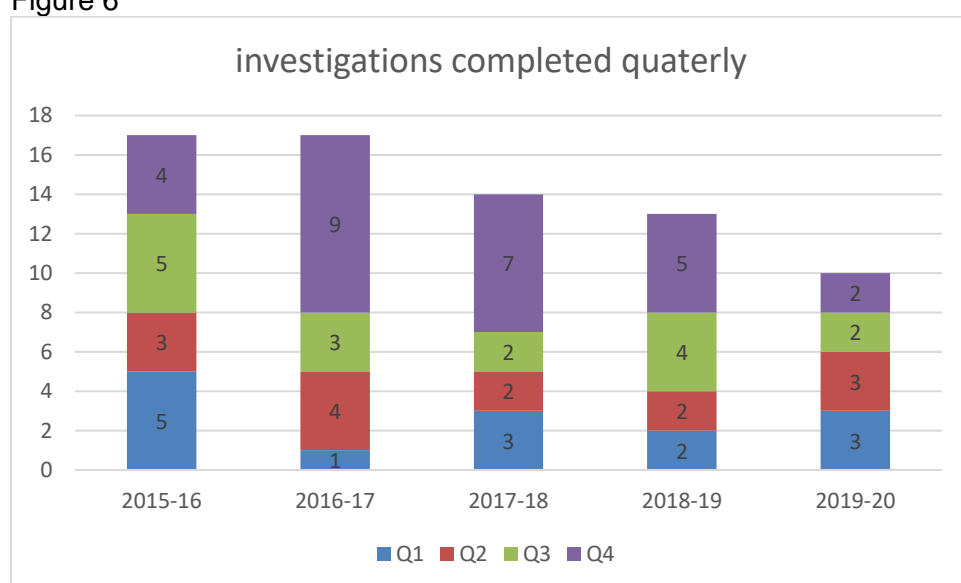
Overall, 11 investigations were opened in the year, 4 by Andrew Walker and 7 by myself. One of the completed cases did not reach a final decision as the issue was resolved by the Trust before it was completed. The only issue which featured more than once was the refusal to renew a mooring licence. All the rest were about

different topics. Eight of the cases were from people who were boaters. Four of the cases were classified as being complex, predominately because of the volume of information provided and the topics concerned.

Of the ten investigations which were completed, three of the complaints were partially upheld, one was resolved and the other six were not upheld. As discussed above the number of complaints handled by the Trust is low compared with, for example, utility companies. By the time complainants come to the ombudsman they have already been through a comprehensive complaint process with the Trust. This year the Trust's internal complaints process has been overhauled and the quality of first and second level responses is carefully monitored. The responses are generally comprehensive and display a commitment to a providing a high-quality investigation. This level of rigour is reflected in the outcome of my investigations.

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

Figure 6



### 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 but this year only one case has exceeded the 90 day deadline and that was categorised as being extremely complex. The time to complete the investigation was 164 days. The average of the other ten cases was 56 days from CCF to final decision. My aim for next year is to improve the timescales.

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

If a consumer complaint is complex and will, or seems likely to, take more than 90 days then both parties must be notified before the 90 day target is exceeded. What constitutes a complex case is not defined in the ADR Regulations. In the Timescales and Key Performance Indicators document on the Scheme website I have defined a complex case as one with multiple issues, where multiple parties are involved or where the analysis is very detailed, and a site visit may be necessary. Cases have been categorised 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 received. In general, it is the time it takes to get the correct information that dictates the time taken to complete an investigation.

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, only one theme emerged and that was problems with moorings, their upkeep, renewal of agreements and changes in location. The Trust's Mooring Agreement Terms and Conditions set out the legal relationship between the Boater and the Trust. Most boaters who have a mooring probably have no reason to regularly refer to this document, but it does set out the responsibilities of both sides. In the event of any dispute my advice would be to check the rules first and then consider if they have been applied in a fair and reasonable way.

## **Eligible cases for investigation which were completed during the year 2019-2020**

I publish the summaries on the website, so they are usually available shortly after the investigation is completed. I have not published the settled complaint as there is a possibility the issue is not fully resolved.

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 1031](#) – complaint about the removal and eventual destruction of a residential boat

[Case No 1039](#) – complaint about the noise from a canal pump in a domestic property

[Case No 1046](#) – complaint about the Trust not taking timely action in relation to complaints about overloaded boats

[Case No 1051](#) – complaint about the payment of mooring fees for an unused mooring because of insufficient depth at the mooring

[Case No 1061](#) – complaint about the way the Trust manages water resources at lakes constructed to feed the canal network

[Case No 1070](#) – complaint about the way the Trust handled a claim of negligence including an allegation of maladministration in relation to information provided to its Loss Adjustors.



[Case No 1082](#)– complaint about alleged failure to act in accordance with the Trust’s Equality process and complaints procedure.

[Case No 1084](#)– complaint about the refusal to renew a mooring agreement because of a breach of the site rules.

[Case No 1091](#)– complaint about the allocation of a vacant mooring

## **Service standards and Policies**

I have updated the Waterways Ombudsman Service Standards and they are published on the website. I am committed to offering a high-quality service. My Customer Service Standards are based on The Ombudsman Association’s best practice guide and describe how you can expect me, and anyone associated with the service to act. They are divided into four groups, communication, accessibility, professionalism and fairness and transparency.

The website has been updated to ensure it is accessible to the visually impaired and policies and procedures have been brought together under one tab to aid transparency.

I have expanded the Behaviour Policy to set out how the committee and I approach situations where we need to protect my ability to continue working when faced with unreasonable behaviour by a complainant. It is hoped the policy will not have to be invoked but having a clear message makes implementation easier if required.

I have also updated the Information Management and Data Protection Policy as well as the Privacy and Cookies information relating to the website.

## **Timescales and Key Performance Indicators**

Andrew and 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**

I have now published a Remedy Implementation Policy which sets out what is expected of the Trusts when an award or recommendation is made. The full policy is available on the website.

Of the three complaints which were partially upheld, one required no further action and two required some action. In complaint [1082](#) the Trust was required to take some action to ensure its staff were aware of a particular term and how it could be used. The Trust took action to ensure the message was cascaded in all team briefings and made the required goodwill payment. In complaint [1039](#) the Trust was required to take some specific action and to keep the customer updated. The action was taken and the customer updated.

## Contacts with stakeholders

In March 2019 the Committee Chairman, Kevin Fitzgerald and I attended the Canal and River Trust's Council meeting in Manchester where we both gave a presentation. The focus was on the Trust's complaints process and the presentation was preceded by the Trust's Customer Service staff who took the Council through the process. The Chairman explained the role of the Committee and its independence and I introduced myself, explained my background and how complaints are investigated. The feedback received from Council members was positive.



In June, I met with Trust staff at its Wigan office to discuss current issues and best working practices. The Trust staff explained new developments in registering and monitoring complaints which they hoped would lead to better identification of complaints and ownership of issues.



In June I attended a Trust Induction Day. The day was held at the Anderton Boat Lift Visitor centre in Cheshire and involved new and old staff from across the many disciplines of the Trust. I really enjoyed the day and was provided with lots of information which has helped me to understand the huge array of functions the Trust is responsible for. To end the day, we were treated to a trip on the boat lift which joins the River Weaver and the Trent and Mersey canal.

In July, I met with the Trust's Customer Service Manager and National Customer Service Co-Ordinator. Discussion focussed on a proposed new draft of the Trust's complaints handling policy and the Unreasonable and persistent complainants' policy.

In July, Andrew and I meet with representatives of The Residential Boat Owners Association, at their invitation. It was an opportunity for Andrew to say goodbye and for me to introduce myself. We had a general discussion about current and upcoming issues which could come to the attention of the Ombudsman.



In December, I met Clive Matthews, the Chief Executive of the Avon Navigation Trust and Adrian Main,

the Office Manager, at their offices in Wyre Piddle near Pershore. Discussion focused on respective roles and how our relationship would work in the future.



I attended the Ombudsman Association Conference in Belfast in May. This provides the opportunity to keep up with developments in the world of Ombudsman and Alternative Dispute Resolution. I joined discussions and seminars aimed at improving processes and procedures and gaining an increased understanding of relevant regulations. I found of particular interest a presentation on the need for kindness, emotion and human relationship in public policy. Taking a Human Approach and Justice for all, was a presentation on the reform of the administrative justice landscape and its capacity to cope. I also attended meetings in Manchester of the Ombudsman Association Policy Network Group and a meeting with fellow data protection officers where I gave a presentation on the need for cooperation.

## In the News

To introduce myself and to increase awareness of the Scheme I took to the Waterways press to introduce myself to boaters and waterways supporters. I penned an article entitled, The Role of the Waterways Ombudsman, for Soundings, the newsletter of RBOA which appeared in the September/October 2019 edition. In the July edition of NABO news I was pictured along with an article of introduction. In January I featured in an article in Waterways World, entitled Can't Complain. The article examined the different approaches to complaints taken by various waterways and explained the role of the ombudsman.

In January we issued a press release to announce that Avon Navigation Trust had joined the scheme which resulted in some good publicity in publications such as Narrowboat World and Towpath Talk.

Links to the publications with the full articles are here: [Waterways World](#) [RBOA NABO News](#) [Narrowboat World](#) [Towpath Talk](#)



Residential  
Boat Owners'  
Association

**narrowboatworld** Est. 2000  
*the voice of the waterways... telling it like it is*



## Customer Surveys

I use a customer survey to record complainants' experiences of using the Scheme where the complaint has been accepted for investigation. Complainants are asked to complete the survey before the draft report is issued, 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. In the table below X indicates there was no response entered.

Seven invitations were issued, and three responded. Questions 3 and 9 are optional. One of the respondents answered questions in relation to a previous complaint so their responses have not been included. 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
1084	X	Very easy	Very helpful	Very helpful	Yes very helpful	Very quickly	Very well informed	Without hesitation
1070	Very easy	Very easy	Very helpful	X	X	X	X	X
1039	X	Very easy	X	Very helpful	Yes very helpful	Very quickly	Very well informed	Without hesitation

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

'Of course, all of the above is prior to ruling! I have no idea how thorough and fair the investigation will be – but all the signs are positive that she is independent minded and providing a very good service.'

'I was not sure what to expect but due to this Ombudsman's professionalism, fairness and efficiency I would never hesitate to use the service again.'

'the matter is being investigated. How well will be determined by the report so it is impossible to say now how satisfied with the service I am going to be.'

## Reflections



As I said in my introduction, this is my first annual report as Ombudsman, having taken over the tiller from my predecessor, Andrew Walker, in July 2019. This followed a four month period in which we served together and I learned the ropes.

In his final annual report (2018-19) Andrew reflected on his period of office and finished by saying that he had found the work to be fascinating and at times quite challenging. I echo that sentiment. The range of subjects which I have had enquiries on is huge and the callers and complainants are deeply passionate about their own issue and the waterways in general. It is heart-warming to know there are so many people who care about our waterways and who enjoy and wish to maintain the pleasure they bring to all.

The reduction in complaint numbers this year has allowed me the opportunity to complete some of the other tasks necessary to maintain the Scheme and ensure it remains up to date with ideas, process and procedures from the world of Ombudsman and complaint handlers. Taking my lead from the 2018 Peer Review I have rewritten the service standards and other policies to give a more detailed explanation of the work I do and how I do it. There is more work for me to do to make the website more visually engaging and informative. I plan to use Google analytics to gain a better understanding of how people find the website and the pages they visit to provide a focus on where the improvements are needed.

The overall aim of any ombudsman service is to make itself obsolete by providing feedback and advice to its members on areas to improve. I can't claim all the credit for the reduction in numbers, but I hope that the help I gave to the Trusts in making improvements to their Internal complaints procedure and the feedback I have

provided about the issues I have seen has been a contributing factor. As I said earlier in the report, I have been 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.

This year the Committee has increased in size so a priority for next year will be to help the new members establish themselves and gain a greater understanding of the work we do. They bring with them a wide breath of experience and knowledge from different areas and I hope to tap into that to make improvements to the way I work. Next year there will be a peer review of the decision making process conducted by two of the Independent Committee members. This will focus on the process of decision making and the presentation of the decision rather than having any influence over the decision made, which remains firmly in my remit. The Committee will also assist me in completing work on a newly created risk register. This will help to ensure that all eventualities are thought through and plans are put in place to mitigate and reduce risk wherever possible.

This year we welcomed Avon Navigation Trust to the scheme. Their joining demonstrates their commitment to excellent customer service and complaint handling. Next year we will be actively contacting waterways, who do not fall within the statutory jurisdiction of other ombudsman, to explain who we are and how we work in a bid to encourage them to join our service. The Waterways Ombudsman Scheme has been successfully running for many years and has specific experience and expertise relating to the management of waterways and their associated assets. This could be of great use to other organisations which share common issues with the Trusts, such as licencing and mooring complaints. There is great benefit to having a completely independent and transparent view of issues raised, a decision based on the evidence provided which is fair and reasonable in the circumstances described and feedback to the organisation on areas to improve. A more joined up approach to the complaints resolution landscape in waterways would make it less confusing for the complainant to know who to contact and help to level the playing field for complainants and providers alike.

The year has passed quickly and the learning curve on all things waterways has been steep. I am grateful to Andrew for his assistance in helping to set me up with the mechanics of the job as well as passing on his valuable expertise of the specifics of waterways complaints. I am also grateful to the committee for their support especially to the Chair, Kevin for his time and encouragement. I look forward to next year and the new challenges it will bring.



Sarah Daniel  
Waterways Ombudsman



# Case Summaries

## Case No 1091– complaint about the allocation of a vacant mooring

Mr J had been resident at his mooring for a number of years and wished to move to a different location within that mooring. He had experienced several issues at his current location, which he had complained to the Trust about, which he believed would be alleviated by a move. When a site became available, he was told that he could not move to it as it had already been allocated to another boater from the same mooring who had submitted a written request to move when the site became available. Mr J complained to the Trust as he felt he had been placed at a disadvantage by not being advised to register his request to move in writing. He argued the Trust should have been aware of his desire to move because of all his previous complaints and he had not been treated in a fair and reasonable way.

The Trust said that it had followed its policy and acted in line with the Mooring Agreement. It had given the site to the person who had requested a move first. The Trust said it was unaware that Mr J wished to move to a different site within that location and had thought he wanted to move elsewhere.

Mr J was also unhappy with the way his complaint was handled, citing obstruction and delays. As the mooring requested was no longer available, he wanted to be compensated by the Trust as a resolution to his complaint.

Having considered the history of events and the timings of the previous complaints raised by Mr J the ombudsman was satisfied that the Trust had been made aware that Mr J wanted to move to another mooring at the site. However, it was clear that the other boater had registered their request to move sites before Mr J and so the Trust allocated the mooring on a first come first served basis. As this was in line with its policy the ombudsman concluded that Mr J had not been treated unfairly and there was no evidence of maladministration in relation to the allocation of the vacant mooring. On that basis, the ombudsman did not uphold that element of the complaint.

In relation to the way the complaint was handled, Mr J was unhappy that his complaint was initially treated as being about a policy decision, since this would correctly fall outside the complaints process. When Mr J contacted the Ombudsman, it became clear that he was alleging that he had suffered injustice, as a result of maladministration, since the Trust had not noted his request to move to a different mooring on the site. That was the substance of his complaint which was within the complaints process and the issue was then escalated to second level and a response provided. The Ombudsman was satisfied that once it was presented with the facts the trust dealt with the complaint correctly and apologised for any delays.

As the ombudsman found no evidence of maladministration by the Trust the complaint was not upheld and no further action was required of the Trust.

**Case No 1082– complaint about alleged failure to act in accordance with the Trust’s Equality process and complaints procedure.**

Mr H says his complaint was not properly answered at first and second level and he has not been treated fairly. His complaint concerned the actions of another boater who he says harassed him and caused him distress and the Trust did not assist him in dealing with this. He complains that the Trust does not have an Unreasonable Behaviour Policy for boaters which means it is not following its duty of care to protect disabled boaters.

My investigation concentrated on the way the complaint was handled and whether the Trust could have used 7.6 of its terms and conditions which say, in essence, that boaters must not behave in a manner that would cause nuisance to another or damage to property.

I upheld Mr H’s complaint that his initial complaint was not responded to in line with the complaints policy and he had to raise the issue again in order to get a response. In addition, not all aspects of the complaint were responded to at the second level stage and this caused further delay.

I did not agree that the Unacceptable Behaviour Policy should include protection for boaters. The policy is designed for use by the Trust staff when presented with challenging customers. However, I did agree that the use of 7.6 of the Trust’s terms and conditions may have helped to manage the situation had it been used and had Mr H presented enough evidence of the problem he was facing. I did not find any evidence that the Trust had failed to act in accordance with its equality policy.

**Case No 1084– complaint about the refusal to renew a mooring agreement because of a breach of the site rules.**

Mr F complained that the response of the Trust to its discovery that he was renting out his boat on a long term let was disproportionate. The Trust refused to renew his mooring agreement saying he had broken the agreement by renting out his boat without permission of the Trust and against the rules of the site. Mr F believes the decision was motivated by the enmity of the Trust staff towards him because of his whistle blowing on individual and corporate misconduct. He says he has not been provided with the opportunity to either, sign up to a new policy regularising long term lets or to stop renting out his boat within a given 28 day period, to prevent enforcement action. He says this is neither reasonable nor compliant with Trust policy.

The Trust says it was presented with irrefutable evidence that Mr F’s boat was being advertised for short term lets which is not permitted at his mooring. He was challenged and agreed the advert would be taken down. He was advised to contact the Trust for more information if he wished to rent out his boat. Some months later the Trust was made aware the boat was being rented out on a long term let, without the permission or knowledge of the Trust. As the Trust had already advised him against renting out his boat it said when his mooring agreement ended it would not be renewed.

Mr F challenged this as being disproportionate to his actions. He said it was custom and practice for boats to be rented out and the Trust was known to turn a blind eye. He argued he had been discriminated against as he had made a number of high level, high profile complaints to the Trust in the past. He compared this to being discriminated against because of whistle blowing.



The investigation focussed on the relevant terms and conditions, if he was given an opportunity to comply, whether whistle blowing legislation was relevant and how the complaint had been handled.

The mooring agreement and the site specific rules of the mooring say the moorings are for the private use of the boat and any breach can result in the loss of the mooring. Mr F was aware that he did not have permission to let out his boat but said he made a reasonable assumption, based on past actions by the Trust, that no enforcement action would be taken. When action was taken, he argued he had not been given an opportunity to comply with the rules and ask the tenants to leave or make the arrangement official. The Trust argued he had been warned some months earlier and so it took immediate action when presented with evidence of the long let. After some initial confusion it was clarified during the investigation process that no business licence to rent out boats would be allowed at his particular moorings.

In considering if Mr F had been discriminated against I concluded that the Trust had acted in accordance with its rules and policies when presented with evidence that the rules had been broken. The Trust has a duty of care to everyone using the waterways and must know who is occupying boats in case of any incidents or accidents. I found no evidence to suggest that Mr F had been treated in a disproportionate way because of his past actions. I concluded Mr F had been the victim of disgruntled tenants who presented the Trust with evidence of the let rather than a victim of discrimination because of his past actions.

I did find some problems with the way the complaint was handled and suggested changes to process to ensure complaints are dealt with in accordance with the policy, however they arrive at the Trust.

**Case No 1070– complaint about the way the Trust handled a claim of negligence including an allegation of maladministration in relation to information provided to its Loss Adjustors.**

Mr G complains that his boat was damaged when it collided with a swing bridge which was not fully retracted and made a claim for compensation for loss of its use, while repairs were completed. The claim was refused on the basis the collision was caused by poor helmsmanship. Mr G became aware, via a SAR, that misinformation in the form of an alleged diary note may have been provided to the insurer and questioned the Trust about this. The Trust did not answer his questions and said that the matter needed to go to court if the customer was unhappy with the response. Mr G wished the Ombudsman to investigate the allegation of negligence, that there was insufficient warning that the bridge did not sit flush with the copping stones, and the veracity of information provided by the Trust to its insurer.

As Mr G had submitted a negligence claim and indicated he would pursue the issue via the courts the question of negligence was not considered. The investigation considered the likelihood that there was maladministration as a result of misinformation being passed to the Loss Adjustor and if the Trust had followed its complaints process correctly.

The ombudsman concluded there had been delays in the handling of the complaint for which the Trust should apologise and pay a small goodwill gesture. In regard to maladministration, the conclusion was there was no evidence of this as the disputed note was only a part of the decision making process. However, the way the Trust had dealt with the note was poor and had exacerbated the time spent dealing with the complaint.

**Case No 1051– complaint about the payment of mooring fees for an unused mooring because of insufficient depth at the mooring**

Mr E complained that he had paid for a mooring for two years that he was unable to use as the mooring needed to be dredged to allow his boat safe access. He said that the staff at the Lock were aware of the issue and had agreed that dredging would be done and advised him not to return until it was complete. The mooring was not dredged. The customer refused to pay for a third year and asked that the Trust forgo payment for the next two years in lieu of payment already made and then dredge the mooring. The Trust denied there was an agreement in place and maintained the mooring was of sufficient depth to allow the boat to moor, according to the dimensions provided by the customer on his boat licencing certificate.

I did not uphold the complaint as the evidence provided indicated that had he tried to moor at the Lock he would have been able to. There were long periods of time when there was no communication between the parties. It appeared to me that Mr E had continued to pay for the mooring in order to ensure it would be available to him should he decide to return. The Trust had refused to allow one of the Mr E's boats to return because of foreseeable problems but that was not the boat associated with the mooring agreement. I was satisfied that the mooring was available for use throughout the period and so it was reasonable for the Trust to expect payment for it.

#### **Case No 1031– complaint about the removal and eventual destruction of a residential boat**

Mr D had been required by a Court Order to remove his boat from Trust waters, but he said that the Trust had given an undertaking that it would allow him to remain as long as he found a home mooring.

His main argument to me was that the Trust had provided incorrect information to the court about the availability of home moorings in the area, and that although he had booked a mooring it was not yet available when the Trust came to seize his boat. He regarded this as a breach of the undertaking, but my view was that as the undertaking had been made in court it must be for a court to decide whether it had been breached.

Mr D's boat was a historic wooden narrowboat. In court he had stated that if the Trust, in seizing it, removed it from the water it would dry out, and one may as well burn it. The Trust did take it out of the water and transported it over 100 miles by road to a dockyard where it was put back into the water, but it sank, and despite attempts to refloat it, sank again. The Trust put the boat on brokerage but said there was no interest, and that it was eventually broken up and destroyed.

The Trust had said that it had taken the boat far away because of the risk that the complainant would try to damage or reclaim it, but based on my meetings with the complainant and discussions with Trust staff my view was that this was an unfounded concern.

#### **Case No 1061 – complaint about the way the Trust manages water resources at lakes constructed to feed the canal network**

Organisation C represents stakeholders with an interest in the lakes as a local amenity and as a wildlife haven. The lakes were constructed as a feeder system for a canal, and that remains their primary purpose, but they are also a prominent local feature and a key part of the local ecology. They are fed by brooks, one of them having a sluice, which when closed diverts the water to one of the lakes, and when open allows the water to bypass the lakes, although this does mean that if the level in the lake is above the cill of the sluice, water can flow back out of it and into the bypass channel. The sluice also has an orifice in it, which when the sluice is closed allows some water to keep flowing into the bypass channel. There is a Memorandum

of Understanding (MoU) between the Trust and the Environment Agency (EA) which aims to prevent water overtopping the dam wall of the lakes and flowing into an SSSI.

The complaint was that over a period of many years the Trust had not properly managed the water resource, in particular that it left the sluice open for long periods during the summer months, resulting in the direct loss of water from the lake into the bypass channel, as well as the consequential result that any further water coming down the brook was not available to top up the lake. Organisation C also said that the orifice in the sluice wasted water.

In its formal responses to the complaint, the Trust focussed on recent weather events, and the need to comply with the MoU, which was especially important during the summer months when an algal bloom develops and it was necessary to prevent this from flowing over the dam wall. However, the organisation argued that the Trust had not dealt with its criticism that the alleged mismanagement had been going on since 2002.

I said that although it was not stated, the implication of the MoU was that the sluice would be closed when the lakes were not likely to overflow. The organisation disagreed with the Trust's statements about its management of the sluice. It said that the Trust did not open them when the lakes were full, but that they were left open from April to October regardless of water levels.

As it happened, during the time I was involved (the first half of 2019) there had been adequate rainfall (in stark contrast with the hot dry summer of 2018 when the water levels had been severely reduced), and the sluice had been left closed, meaning that water was diverted to the lakes. Whether that was because I was involved I cannot say. Nonetheless, I found it hard to reconcile what seemed to me to be the Trust's unequivocal statement that its operation of the sluice was designed to satisfy the twin objectives of maximising water level while minimising the risk of overflow, with Organisation C's statement that in most years the Trust left the sluice open for long periods in the summer months.

I cannot direct the Trust in what is after all a matter of policy. I could require it to do certain things if I were to conclude that there had been maladministration. The purpose of the MoU is to agree and control the distribution of the flows to the lakes. It is not a statement about how the Trust will manage its water resources but how, for example, it will avoid overflow into the SSSI. Although the implication may be that the Trust will try to maximise water levels, the MoU does not say this, and I did not conclude that there had been maladministration.

The original purpose of the lakes was to feed the canal network. If the management of the lakes left that short of water, it would not lead to an injustice suffered by Organisation C, although it may potentially affect canal users. Nonetheless, I said that the Trust did present the lakes as an amenity, as a beauty spot and as a centre for leisure activities, and it would seem reasonable to assume that it would endeavour to maintain water levels at the maximum level commensurate with satisfying the MoU, and any operational requirements. The Trust accepted that a review of the MoU was due, and that in doing so it would welcome the views of Organisation C and give it an adequate opportunity to comment.

Although I made no recommendations I did say that this did not mean that I thought the Trust could not more effectively manage the water resources to satisfy a wider range of stakeholders, but because I had not concluded that there had been maladministration.

**Case No 1039 – complaint about the noise from a canal pump in a domestic property**

Ms B lives in a house, next to a canal lock, which incorporates an old pump house, to pump water from below the lock back to the pound above it. The original pump was steam-powered but was some time ago replaced by an electric pump. The pump sits at the bottom of a large flooded chamber, below one corner of the house, and pumps the water up through a pipe to an external housing from which it flows back into the canal. It is one of a series of pumps designed to conserve water which flows down the canal as boats travel through the locks. It is needed more in dry conditions, and during the cruising season when the locks are used more often.

Ms B said that the noise of the pump causes a nuisance, which some years ago was less of a problem. Its maximum hours of operation are 6 am to 6 pm, but during the time she has lived there it has been used more of the time, partly because of drier conditions and partly because of increased boat traffic. She had spent many hours, over a long period of time, trying to get the Trust to do something to reduce or eliminate the noise, but although the Trust had done some things there was no obvious solution nor any clear plan to address the problem. She was unhappy with what she saw as the lack of action by the Trust, long delays in getting things done, and its failure to sort out the problems in a property which it had been content to sell for residential use.

The Trust had recently engaged the services of an external acoustic consultant, and during the time I was involved it issued a draft and then a final report. Its recommendations included de-watering the chamber to enable an inspection and repair of any defects, improving the mounting of the submersible pump, installing a replacement pump, and reviewing and introducing management protocols to limit instances where noise levels were raised due to filter clogging.

I had no doubt that the noise of the pump was a severe nuisance to Ms B, and that it caused her distress for long periods, not just when it was running, but even when it was not running because of anticipation of it coming on unannounced. However, I was limited in what I could do. The only solution guaranteed to be effective would have been to relocate the pump outside the perimeter of the house, but the cost of this would undoubtedly have far exceeded my maximum award of £100,000, and I could not require such a remedy. In discussion with Ms B and Trust staff on a visit to her house, it did seem that there might be alternative remedies which, while perhaps being less effective, might reduce the nuisance level, such as to install a quieter pump with less capacity but run it for longer hours.

During my investigation the Trust was considering the situation, and decided that it would provide funding for further investigatory and remedial works. Having seen the noise report and the recommendations, my view was that there probably nothing more I could usefully do, and that I should cease my involvement and leave the Trust to get on with the work. I was confident that it would carry out the proposed actions, and that my presence was not required to ensure this. Although this did not seem to me to be an entirely satisfactory resolution of the complaint, because it would be unlikely to eliminate the noise, Ms B felt that without my involvement matters would not have progressed as far as they did, and that I had managed to achieve something she had not.

**Case No 1046 - complaint about the Trust not taking timely action in relation to complaints about overloaded boats**

Organisation A is a residents' association, comprising members who overlook a river. Their complaint, as dealt with by the Trust, was about what they saw as its failure to deal with their request to it to take action in respect of what they said was the overloading of boats. The boats were operated by a local hire boat operator, providing services for people to scatter the ashes of deceased relatives on the river. The organisation had also raised a number of other issues with the Trust, but which had not been considered formally in the complaints process, and which it wanted me to look at.

There is a patchwork of law and regulation covering waterways and their use, and for many of those uses the Trust has no responsibility for taking enforcement action. The organisation's view was that at least for some of them it would be better if the Trust, given its prominent role in waterways issues, were to take the lead.

The issue which the Trust had considered was whether it should have acted more quickly in response to Organisation A's request for action in respect of the overloading of boats. This is in fact not the responsibility of the Trust, but that of the Maritime and Coastguard Agency (MCA), even for inland waterways. The Trust did eventually alert the MCA to the issue, but it took several months, by which time the organisation had contacted the MCA directly. The Trust did accept that there had been delays, for which it apologised. I agreed with the Trust's own assessment, but did not consider it appropriate to go further or to make any recommendations.

The Trust does have a process in place for dealing with such matters, although in this case there was a delay which should not have happened. This did not reflect Organisation A's experience, but it did not mean that a new process was needed; rather, the Trust should ensure that the existing process worked.

On the other issues, I said the most I could do would be to consider whether there was any merit in them being examined in greater detail. If I reached the conclusion that the Trust did not have jurisdiction, there was probably nothing to be gained by the submission of formal complaints.

The issues included Organisation A's view that the hire boat operator was ignoring Environment Agency (EA) guidance about the scattering of ashes, for example that it should not go ahead in windy conditions, near residential locations, or places used for fishing and bathing. The organisation said that this had previously been EA policy but had been downgraded to guidance. It argued that the Trust should take over the responsibility for enforcing the guidance, but I said it did not have appropriate legal powers to take enforcement action, and that if it were to do anything it could only be on a voluntary basis. If it attempted to take any enforcement action it could simply be ignored.

On the issues of the numbers of boats operated by the boat hire company, and the hours of operation, these were matters for the Local Authority to deal with, in relation to what is known as the Certificate of Lawful Use. On whether, at the mooring operated by the boat hire company, more boats were being used for residential purposes than the permission allowed, this was also a matter for the Local Authority to enforce.