



THE WATERWAYS  
**OMBUDSMAN**



Annual Reports of

The Waterways Ombudsman Committee

and

The Waterways Ombudsman

for 2017-18



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## **ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN COMMITTEE 2017-18**

### **Chair's Report**

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

The main roles of the Committee are:

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

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

The Committee members at the 31 March 2018 are:

#### **Independent Members**

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

#### **Trust representatives**

Gill Eastwood  
Janet Hogben

The Committee met four times in the year.

## Member profiles of the Ombudsman Committee as at 31 March 2018

### Chair

**Kevin Fitzgerald** is *Directeur du Cabinet* at the United Nations World Intellectual Property Organisation, Geneva. 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. Other roles have included being The Independent Member of the Public Diplomacy Committee at The Foreign and Commonwealth Office and Independent Non-Executive Director of the East of England Tourist Board. He was awarded a CMG in the Queen's Birthday Honours 2013 for services to British economic interests.

### Other Independent Members

**Steve Harriott** is an independent member and works as the Chief Executive of The Dispute Service which operates tenancy deposit protection schemes across the UK. These schemes all operate under government contracts. In addition to protecting deposits it also provides free alternative dispute resolution services in relation to tenancy deposit disputes and deals with c. 16,000 disputes a year.

Steve's professional background is in the area of social housing where he has worked as chief executive of a number of housing associations in England. He also serves as an independent member on the Boards of Chatham Maritime Trust (as Vice Chair) and of Gravesend Churches Housing Association in Kent (as Chair designate). He writes widely on tenancy deposit issues and is keen to see the wider use of alternative dispute resolution to resolve consumer disputes.

**Jenny Murley** has a BA in Law from Anglia Ruskin University and a Masters in Law from Queen Mary and Westfield College. She was called to the Bar in 1982. She currently works as the Compliance Manager to an FCA regulated Firm which manages renewable energy infrastructure funds. Jenny has previously worked for the Consumers' Association, the Investment Management Regulatory Organisation (IMRO), and the Insurance Ombudsman Bureau.

### Members appointed by the Canal & River Trust

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

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

## **Independence**

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

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

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

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

In March 2018 the Committee's independent members undertook a review of three complaints; the highlights are provided below and the full case review summary is provided in the annex to this report.

The committee reviewed three cases selected at random by the Chair from the cases decided in 2017-18 and were satisfied that the decision letters were of the appropriate quality. In every case the Ombudsman had set out in detail the complaint, the investigations he had carried out, his final decision and the reasoning behind this. In all cases the language used was clear.

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

The Independent Members were of the view that the Reports were well written, dealt with the issues and had the appropriate level of thoroughness.

It was noted that the satisfaction scores on process/responsiveness had been consistently high, indicating that complainants were content with the service delivered.

Notwithstanding that this case review was not intended to be a review of the Recommendations, it was noted that the Independent Members did not disagree with said Recommendations.

## **Finances**

The Committee appoints the Ombudsman and the Committee is funded by the Canal & River Trust to meet the costs of this service. The total cost of the Ombudsman service in 2017-18 was £37,661.43 (2016-17 £33,788.33) (2015-16 £40,910.29). All expenditure is authorised for payment by the Chair. The higher costs in 2015-16 were due to the costs of the first

application to the Chartered Trading Standards Institute to obtain the required certifications for the Scheme. Subsequent renewal costs were lower. The Ombudsman charges for his services on a time and materials basis and is not an employee of the Committee or the Canal & River Trust.

### **The EU Alternative Dispute Resolution Directive**

This came into force in July 2015 and required most Ombudsman schemes to obtain certification from a “competent authority”. For us, the competent authority is the Chartered Trading Standards Institute and certification will mean that we meet the requirement of the Directive and the related UK Regulations. The Scheme first obtained certification on 20 August 2015, and it continues to be approved.

### **Validation by the Ombudsman Association**

The Ombudsman Association (“OA”) is the professional association for ombudsman schemes and complaint handlers, their staff and others interested in the work of independent complaint resolution. It periodically revalidates its members to ensure that they continue to uphold the standards and principles of the Association. At its meeting on 5 May 2017 the OA’s Executive Committee agreed to its Validation Committee’s recommendation to re-validate the Waterways Ombudsman Scheme.

### **Looking forward**

The Committee remains focussed on ensuring that an effective Ombudsman scheme is made available to those who use the services provided by the Canal & River Trust or any of its subsidiaries, or who may be affected by their activities. During the year the Committee has been working to extend the work of the Ombudsman into other canals and waterways where the services of an independent Ombudsman would be helpful and it is anticipated that the Scheme will extend its reach in the coming year. The Committee has also been working on succession planning, both for the Ombudsman and Committee Members, and appropriate advertisements will be placed in the course of 2018.



Kevin Fitzgerald CMG  
Chair, Waterways Ombudsman Committee

## ANNUAL CASE REVIEW - SUMMARY

### Introduction

In a meeting on Monday 26 March 2018 at the Little Venice offices of the Canal & River Trust, the three Independent Members of the Waterways Ombudsman Committee – Ms. Jenny Murley, Mr. Steve Harriott and Mr. Kevin Fitzgerald (Chair) – met with the Waterways Ombudsman – Mr. Andrew Walker – for their annual case review.

The Chair reminded the Independent Members that the purpose of the Waterways Ombudsman Committee *is to oversee the operation of the Scheme and the independence and accessibility of the Waterways Ombudsman*

and

*the purpose of the Scheme is to make available a Waterways Ombudsman, who is independent and accessible, to investigate in an efficient, effective, transparent and fair manner complaints of injustice suffered by a complainant that arise from maladministration or unfair treatment by the Trust, or any its subsidiaries, in carrying out their activities*

and thus

the purpose of the annual review was to ensure that the Scheme remained fit for purpose and that the Waterways Ombudsman was undertaking his duties in accordance with the Rules.

The Chair had circulated three cases, which he had selected at random whilst being mindful of a spread of subject matter. The Independent Members had the Waterways Ombudsman's written Report of each complaint at their disposal but not the full file of correspondence and evidence.

The Waterways Ombudsman was available to the Independent Members for questions of clarification, but was not a voting member of the review group.

For the sake of clarity, this Case Review was not a review of the Waterways Ombudsman's Recommendations, which were and remain his independent purview.

### Complaint 963

Paragraph 1.5 should have been amended, on final publication, to reflect the final timescales.

Paragraph 1.7 was deemed to have been a useful summary of the complaint. It was requested that such a summary be presented in all future cases as an opening section, and, further, that, in the concluding section, each of these points be addressed.

In the proposed peer review by an external ADR case expert, he/she might be asked to consider whether a complainant might be required to agree to a 'scope' of the complaint, in order that the point by point summary of the complaint was really clear. Nevertheless, it was important to bear in mind that not all complainants would find such a formal approach

easy to comprehend and that it was part of the role of the Waterways Ombudsman to be accessible and to 'level the playing field' for those who might not understand such an approach.

It was acknowledged that the Waterways Ombudsman had helpfully noted matters which the complainant had raised, but which were outwith his jurisdiction.

It was suggested that the conclusion at the end should summarise point by point the response to each element of the complaint as set out in the introduction to the report.

#### **Case 989**

This case was a good illustration of matters which complainants find very frustrating, but which largely fall outwith the jurisdiction of the Waterways Ombudsman. Nevertheless, the Independent Members noted that the Waterways Ombudsman had communicated well with the complainant and had executed his researches diligently.

It was suggested that the conclusion at the end should summarise point by point the response to each element of the complaint as set out in the introduction to the report.

#### **Case 966**

The points on Report structure, as in complaint 963 above, were repeated.

It was suggested that the conclusion at the end should summarise point by point the response to each element of the complaint as set out in the introduction to the report.

#### **In conclusion**

The Independent Members were of the view that the Reports were well written, dealt with the issues and had the appropriate level of thoroughness.

It was noted that the satisfaction scores on process/responsiveness had been consistently high, indicating that complainants were content with the service delivered.

Notwithstanding that this case review was not intended to be a review of the Recommendations, it was noted that the Independent Members did not disagree with said Recommendations.





# ANNUAL REPORT

## THE WATERWAYS OMBUDSMAN 2017-18

### Introduction

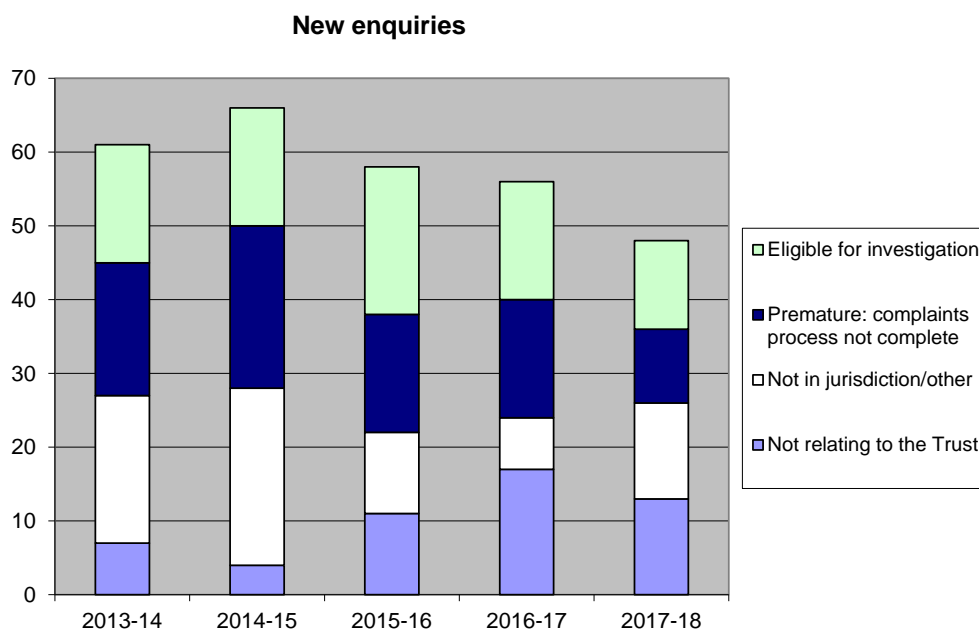
1. This is my sixth annual report as Waterways Ombudsman, covering the period from 1 April 2017 to 31 March 2018. Again, the complaint workload has not changed significantly from previous years, and I continue to receive enquiries and complaints covering a broad range of topics.

2. The Waterways Ombudsman Scheme (“the Scheme”) is a full voting member of the Ombudsman Association (“the OA”), which is the professional association for ombudsman schemes and complaint handlers, their staff and others interested in the work of independent complaint resolution. On a roughly three year cycle the OA (through its Validation Committee) conducts a re-validation of its members. At its meeting on 5 May 2017 the OA’s Executive Committee agreed to the Validation Committee’s recommendation to re-validate the Scheme. The Scheme also continues to be approved by the Chartered Trading Standards Institute.

### Casework – enquiries

3. Last year, the number of enquiries decreased from 58 to 56, and this year has seen another fall, to 48. An enquiry is any kind of approach, regardless of whether it falls within my terms of reference or not. If it does, I open an investigation. I always receive some which are not about the Canal & River Trust (“the Trust”). In some cases the enquiries are not about waterways at all, and the number varies substantially. In the past four years it has been as low as four and as high as 17, and this year there were 13, although once the four about water utilities are excluded the rest were all in some ways related to boating, waterways, or property which was at one time owned by the Trust.

4. The number of enquiries eligible for investigation is not necessarily the same as the number of investigations I have opened in the year, because where I receive an enquiry late in the year I may not open it until after the year has ended. There were 35 enquiries that were in some way about the Trust, down from last year’s 39. The chart on the next page shows the breakdown of all enquiries for the past five years.



5. The numbers for 2017-18 are set out in the table below:

A	Eligible for investigation	12
B	Premature: internal complaints procedure not complete	10
C	Not in jurisdiction/other	13
D	Not relating to the Trust	13
	<b>Total</b>	<b>48</b>

6. Of the 35 enquiries that were about the Trust, 12 were eligible for investigation. There were 10 enquiries relating to the Trust, which might potentially be in my jurisdiction but where the internal complaints process (“ICP”) had not been completed. I refer such complainants to the ICP, explaining that they can come back to me if they remain dissatisfied at the end of the process. This group does not include any complainants who, having first come to me prematurely, have subsequently returned to me and where I have opened an investigation. In most of these cases the complainant does not return, but there was one where it seemed likely that I would be asked to investigate once the ICP was completed, although this would not be until after the end of the year.

7. I categorised 13 enquiries as “not in jurisdiction/other”, which means that they were in some way related to Trust activities. Some are straightforward enquiries or requests for information, or where an email to the Trust has been copied to me. Occasionally I intervene in a problem where the ICP has not been completed, and I received one such enquiry this year. A lady was representing a friend, who had a number of problems, and who was having difficulty getting a mooring despite being eligible for Housing Benefit which would have paid the mooring fees. This was a complex matter, and one where because of the urgency it would not have been appropriate to require the complainant to go through the ICP. I do stress that the Ombudsman scheme is neither an emergency service nor a substitute for the Trust’s ICP. However, if I can prevent a situation from deteriorating, and achieve a resolution without the need for the parties to go through the ICP, I will intervene.

8. Of the 13 enquiries which were not about the Trust, four were about water utilities. The other nine, covering boating and waterways in some way, were about:

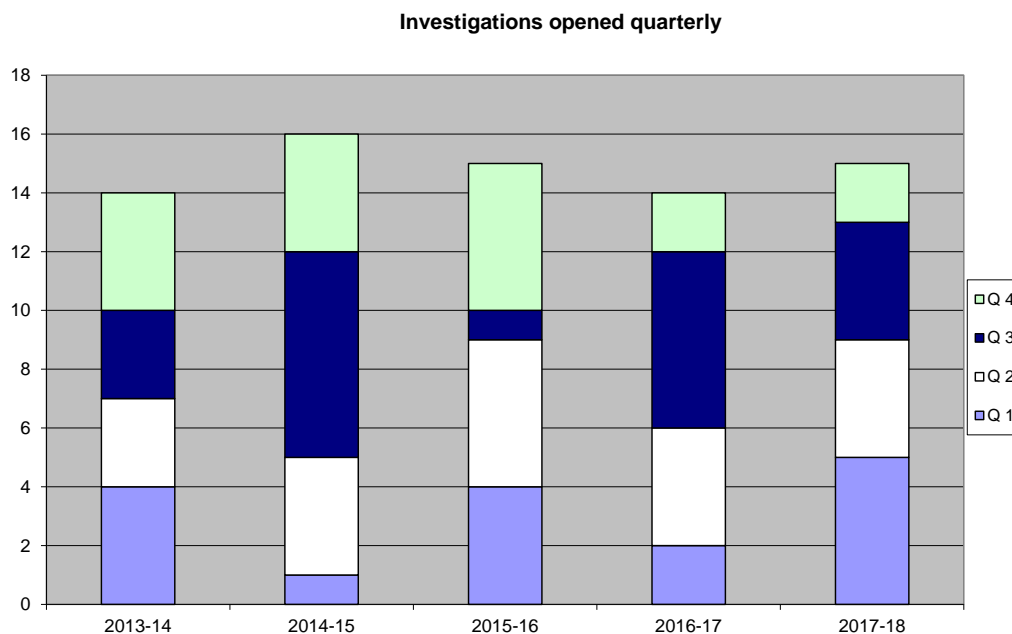
- the Environment Agency (1 enquiry)
- Avon Navigation Trust (1)
- the Boat Safety Scheme (2)
- boat brokerage (1)
- dredging at a non-Trust marina (1)
- marine engine repair (1)
- how to get a free mooring anywhere (1)
- rodents in a property on Trust land (1)

9. The Boat Safety Scheme (“BSS”) is a public safety initiative owned by the Trust and the Environment Agency. It is not a subsidiary of the Trust, but it is administered by Trust staff and I can consider complaints about office staff member administration, processes and conduct. Complaints about other aspects of the BSS have their own complaint routes, as set out in a table on the BSS website<sup>1</sup>.

10. Although my website does make it clear what people can complain about, some enquirers are referred to me by other organisations. It is inevitable that I will continue to receive enquiries which are not about the Trust, but the time taken in dealing with them is very low and has no adverse impact on work within my remit.

### Casework – investigations

11. I opened 15 new investigations during the year, compared with 14 in the previous year, and completed 14, compared with 17 in the previous year. There was one investigation open at the start of the year, and two open at the end. The chart below shows the breakdown by quarter for the past five years for investigations opened.



12. The number of complaints entering the first level of the Trust’s ICP has remained fairly static over the past few years. In 2005-06 there were 1,001 such complaints, with 99 entering the second level and 29 Ombudsman investigations, but over the past five years the

<sup>1</sup> <https://www.boatsafetyscheme.org/about-us/customer-charter/complaints,-queries-and-appeals-chart/>

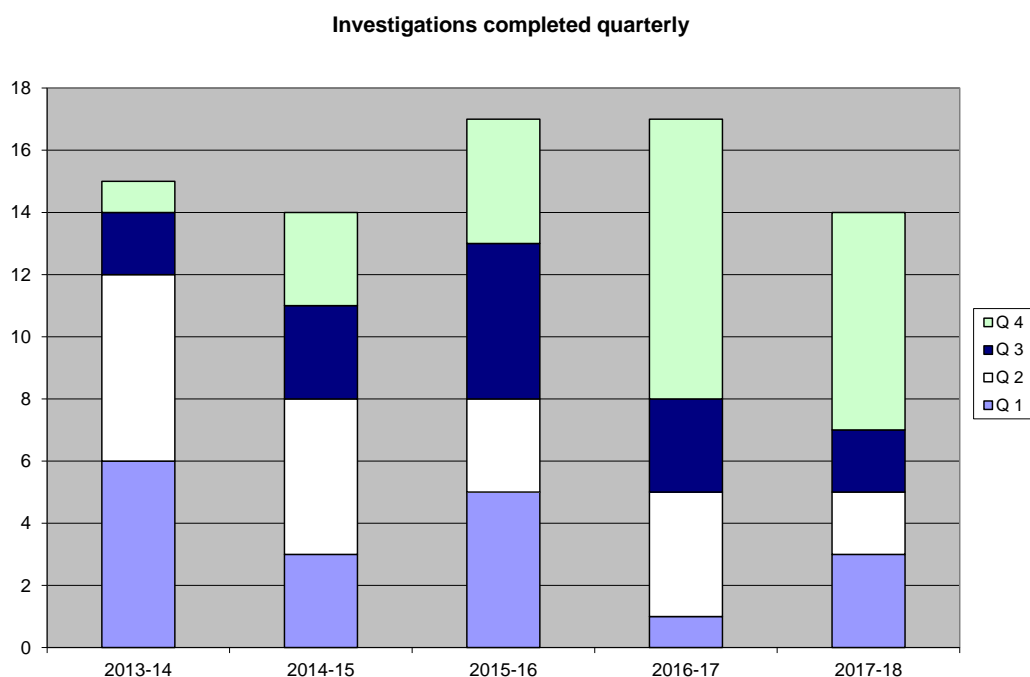
average number of complaints entering the first stage of the ICP has been 225. While there have been 252 in this year, there is currently no evidence of a sustained increase.

13. The Trust handled 39 complaints at the second level compared with 34 last year, which I do not regard as a statistically significant change. The proportion of those complaints which come to me, and which I eventually convert into an investigation, remains around the 40% mark or slightly below.

14. I completed 14 investigations in the year (listed in the Annex to this report). Apart from two complaints about continuous cruising licence restrictions, and two about the registration of a piece of land, all the rest covered a broad range of different topics, including the impact of HS2 on a stretch of land, the Trust's charges for conveying a domestic water pipe across its land, and the administration of the BSS. Eight of the 14 complaints were from boaters (compared with 12 out of 17 in the previous year).

15. Of the investigations I completed, I upheld one (case [963](#)). In a further four investigations (cases [932](#), [972](#), [988](#) and [989](#)) I either upheld the complaint in part, or upheld elements of it. There has been one notable difference in the investigations I have completed this year, which is that the average complexity has increased significantly. I discuss this further below, in paragraphs 20 to 23.

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



### Time taken to complete investigations

17. Under the ADR Regulations<sup>2</sup> I am required to complete cases within **90 days** except where they are complex. That period starts from the date on which I receive what is referred to as the Complete Case File (CCF), which is the evidence from the parties, as well as any

<sup>2</sup> <http://www.legislation.gov.uk/uksi/2015/542/contents/made>

third party reports or expert input, to complete the investigation. It ends on the date on which I issue my final report, having previously issued a draft report on which both parties were able to comment.

18. In practice, it is sometimes difficult if not impossible to decide at the start of an investigation exactly what evidence I will need to complete it. In some cases the CCF does include all (or at least almost all) of the evidence I need to complete an investigation, but that is frequently not the case, and the need for further evidence, information or opinion becomes clear only later. While this does lead to delays in completing investigations I do not think it would be appropriate to stop the clock each time I am waiting for further information. No case which I have categorised as not being complex has exceeded the 90 day deadline.

19. For the 14 investigations I completed this year, the average delay between accepting a case for investigation, and receiving the CCF, has been 23 days, and in half of the cases there was no gap at all. Of the seven cases where there was a gap, the average gap has been significantly influenced by two cases, which were about the same situation (although they focussed on different issues). There was a delay of 105 days while I was awaiting a policy statement by the Trust, without which I was unable to make any further progress. It does arguably distort the statistics to count the same delay twice, and if I discount one of those cases the average delay falls to 16 days.

20. If a case is complex and will, or seems likely to, take more than 90 days then I must notify the parties before the 90 day target is exceeded. What constitutes a complex case is not defined in the ADR Regulations, but I have previously considered a complaint about a single issue, such as the licence fee, as not being complex. Where there have been multiple issues, where other parties are involved, or where the analysis is very detailed and/or I need to make a site visit, I have generally categorised the case as complex. I have categorised cases as complex or not complex regardless of how long they take, because it is important to be able to provide information on the types of cases I receive.

21. In practice, however, there is not always a clear correlation between complexity, and how long cases have taken to complete. A key determinant of the duration of investigations has been related to issues which have been uncovered during my analyses. As I have said, it has proved difficult, if not impossible, to uncover all the issues before I start my analysis. An example to illustrate this point is case [932](#), about whether there was unauthorised residential use at a marina. In addition to the complainant and the Trust, there were two other parties (the marina manager and the Local Planning Authority), and it was clear that I could not complete my investigation without considering the roles and actions of the other parties.

22. Some complex cases do not take long if I have all of the evidence I need at the start of the investigation, but in other cases, which are either less complex, or not complex, there are delays while I await further evidence or information.

23. There was a marked difference in complexity between this year's cases and those I closed in 2016-17. Of the 17 cases I completed last year, 10 were complex, but of the 14 I completed this year, 12 were complex. There is no obvious explanation for this, but given the small number of cases I handle it is not surprising that there are fairly wide variations between years, and there is no current evidence to suggest that the difference is indicative of a long-term trend.

24. Of the 14 cases I completed, all except two took less than six months to reach a decision, and seven took 90 days or less. All seven cases that took longer than 90 days were complex, while five of the seven that took 90 days or less were complex.

25. For all 14 cases, the average time to complete the investigation was **105 days**. This is significantly less than the average of **140 days** in the previous year. However, that was exceptional, having been skewed by two cases, which took 637 and 660 days and, as I noted in my report, both cases were opened before the ADR Regulations came into force, and I recorded the start date as the date on which I accepted the complaints for investigation, rather than the date on which I received the CCFs, which would have been much later.

26. As in the two previous years, there were two cases which were very complex, and which have significantly increased the average time taken to complete the cases. If I exclude those cases, the average increases from 72 days to 83 days. As there were only two cases which I did not categorise as complex, the average completion time for those cases of 56 days is not statistically significant.

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

<b>Time to completion</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>
<3 months	10 (67%)	8 (57%)	10 (59%)	10 (59%)	7 (50%)
3-6 months	3 (20%)	5 (36%)	5 (29%)	4 (24%)	5 (36%)
6-9 months	2 (13%)	1 (7%)	0	1 (6%)	2 (14%)
9-12 months	0	0	2 (12%)	0	0
>1yr	0	0	0	2 (12%)	0

28. There were two open investigations as of 31 March 2018. I had accepted one for investigation on 20 February, and the other on 8 March.

### **Reasons for complaints which were investigated**

29. Once again, the complaints I investigated covered a diverse range of topics. There were two complaints about licence restrictions for boaters without a home mooring (BWHM). In case [956](#) the complainant was aware of changes in guidance for BWHM but argued that the changes were arbitrary and inappropriate. He sought to commit the Trust to accepting his own proposal for an acceptable pattern, based on earlier continuous cruising (“CC”) guidance, by issuing what was in effect a declaration, stating that if the Trust did not agree he (and others) would by default be able to cruise according to his own proposal. I did not accept that the Trust could be committed in such a manner, saying that the complainant was free to seek a decision from a court if he disagreed with mine. I noted that in any case, by purchasing a licence for his boat he had agreed to the Trust’s current terms and conditions, which included the current guidance for BWHM.

30. In case [966](#) the complainants – liveaboard boaters without a home mooring – were based on the Gloucester and Sharpness Canal. In their view navigating further afield, via the River Severn, was potentially hazardous. They also felt that as they were both of working age, and found it difficult to get time off to go cruising, the Trust’s CC guidance was discriminatory. I could find no reason why the Trust should suspend or limit its guidance based on the geographical situation. Although age is a protected characteristic under the Equality Act 2010, being employed is not, and the Trust cannot reasonably be expected to disapply or amend its guidance for people who are employed.

31. There were two complaints about a single situation (although from different perspectives), which was about a neighbouring landowner having several years ago registered a strip of British Waterways land, adjacent to a permanent mooring. This did not come to light until more recently, when the consequences became apparent, at which time the Trust decided to close the mooring. In case [972](#) the complainants felt that there was a key issue about the protection of assets for the benefit of the nation, the community, and individual boaters, as well as their own enjoyment of the location. In case [974](#) the complainant wanted to keep his boat at the mooring, which he had enjoyed for many years. At the time the complainants came to me the Trust had not made a decision about whether it would try to regain the land.

32. There was a significant delay between accepting the complaints for investigation, and receiving the CCF. I sought clarification from the Trust on what action it intended to take. My view was that it would not be a satisfactory way to conclude the complaints simply to require the Trust to make a decision about whether it would try to regain the land. That was the final position reached by the complainants, and partly why they asked me to investigate. The Trust did then make a decision that it would take steps to regain the land. However, while I accepted that this was a difficult situation for the complainants I could not compel the Trust to regain the land, regardless of cost. The decision to close the mooring was a policy matter for the Trust, which was outside my remit.

33. There were no common themes among the other ten cases, which I review below.

#### ***The routing of HS2***

34. In case [909](#) the complainant, who runs a cruise boat business on the Grand Union Canal, in an area of West London which would be crossed by HS2, felt that the Trust had not done enough to try to get the railway re-routed to a less environmentally-sensitive area, or via a tunnel. The area was quite large, with significant biodiversity. As well as the canal there were lakes and wetlands. I had no reason to doubt that the construction of the railway would have a significant local impact on the area, at least during construction, but the Trust manages only a small part of it and the rest is the property of other landowners. Rather than opposing the development, it decided to enter into a Side Agreement with HS2, containing many provisions relating to the planning and construction, the maintenance and restoration of the local environment both during and after construction, biodiversity, land contamination and pollution control. It regarded the Side Agreement as an important means of ensuring that it would have as much control over the operation as possible, on its land and within 15 metres of its boundaries.

35. The way the Trust had dealt with the HS2 development was a matter of policy, which is outside my remit. I doubted, in any case, that it was in a position to make unilateral decisions about the situation, or perhaps even to significantly influence the plans for HS2. I found no evidence of maladministration and I did not uphold the complaint.

#### ***A domestic water pipe laid across Trust land***

36. Case [942](#) was about the Trust's right to charge for a domestic water supply to cross its land (part of which was over the end of a canal tunnel), and how much it could charge. The property was bounded by Trust land or waterways. When the householder moved into the property some ten years earlier he had agreed, under protest, to pay the annual charge of £420 plus VAT (a very substantial increase on previous charges). The Trust argued that it had a duty to realise best value from its assets. The householder's view was that the charge was exorbitant, especially considering that the charge in 1955 was £1 per year (or around £20 in today's money).

37. If a pipe is laid under statutory powers, under the Water Industry Act 1991, any charge to the consumer is limited. In this case the pipe was not laid under statutory powers, and while it may have been possible to have had a new pipe laid under statutory powers if it was routed via an access road and along the property's driveway, the costs would have been substantial.

38. The Trust land in this situation is known as a ransom strip; in effect where a charge can be made for crossing it which exceeds its normal market value. The Trust did commission an independent market report, in which the RICS valuer considered two possible market valuations, based on the area of land put out use. However, the valuer went on to say that she considered that the (higher) charges made by the Trust in similar situations elsewhere in the country were more reflective of market values. This was a private agreement between the Trust and the householder, and it was not within my remit to determine the charge so I could not uphold this element of the complaint.

39. There was another issue, that the Trust had proposed that for engineering reasons the water pipe be re-routed, at the householder's expense, under the adjacent canal rather than over the end of the tunnel, where it had originally been laid. Even though current practice may be to route pipes under canals there was nothing in the Trust's policies which required re-routing of existing pipes, and I decided that if the Trust did want the pipe re-routed it should be at its own expense unless it could provide a compelling reason why it should be re-routed, which it accepted.

#### ***Residential occupation of boats at a leisure marina***

40. In case [932](#) (see also paragraph 21 above), a complainant whose house overlooked a marina said that contrary to the marina rules there was residential occupation of boats, and that some boat-owners broke several marina rules, and in doing so caused a nuisance to the people in properties around the marina. The lease document between the Trust as the marina owner, and the marina operator, stated that there was to be no residential use. Although the marina said that there was no such use, I fully accepted the complainant's assertion that there was.

41. However, the lease did not compel the Trust to take action to remedy a breach, nor to require it to be remedied. It said that it was for the Local Planning Authority (LPA) to decide whether there was in fact residential occupation. At the time I was dealing with the complaint the LPA was considering a planning application for residential occupation at the marina.

42. Because it was a policy matter as to whether to enforce the covenant, I could not require the Trust to do so. It seemed to me that if the LPA did grant planning permission for residential use, then whether the lease prohibited it was no longer a relevant issue. The wording would either have to be changed, or could effectively be disregarded.

#### ***Complaint about boaters at a visitor mooring***

43. Case [978](#) was a complaint about nuisance caused by boaters at a visitor mooring. This was similar in many respects to cases [837](#) and [848](#) last year. Whether or not there was a statutory nuisance was for the local authority, and not the Trust, to determine. Over a period of several months across two years the local authority had carried out over 100 monitoring visits but had found no evidence of statutory nuisance. The complainant wanted me to adopt a broader definition of nuisance, but I could not influence the local authority's procedures and my view was that I had to respect legal definitions of statutory nuisance.



44. I accepted that the emissions from boats, particularly of diesel exhaust, may be a nuisance to residents, but I found no evidence of maladministration by the Trust and did not uphold the complaint.

***The basis on which the Trust can revoke a licence***

45. In case [953](#) the roots of the complaint had been laid about five years earlier when the Trust successfully sought a Court Order for the complainant to remove his boat from Trust waters because he had not paid his licence fee. He did eventually pay for a new licence and return to Trust waters later in 2017, but this was only after he had applied for, and was issued, a licence earlier in the year, but then had it revoked by the Trust.

46. The complainant argued that under section 17 of the British Waterways Act 1995 there were only three ways in which the Trust could revoke a licence, and that even then the Trust had to give at least 28 days' notice. The Trust had explained that the licence had been issued in error, but the complainant did not accept that this was a valid reason. I took the view that notwithstanding the wording of the 1995 Act, it did not preclude the Trust from revoking the licence for other reasons, such as to correct an administrative error. However, I said that a court may reach a different conclusion.

47. This was a difficult case, made more so by a long history of poor relations between the Trust and the complainant. I felt that the Trust could sometimes have provided better or clearer explanations, and had made technical errors (which it accepted and for which it had apologised). However, I did not accept the complainant's view that it had acted deceitfully, unlawfully, or unreasonably, nor had it deliberately misled him.

***Tenure at a previously unused mooring***

48. In case [986](#) a boater had found what he said was a vacant mooring by a bridge. The Trust did grant him a 12 month mooring agreement but said that he must vacate the mooring when it ended.

49. In line with its process of streamlining the mooring renewal process, the Trust had automatically sent him a letter explaining that if he agreed to pay by direct debit his mooring would be renewed automatically. He replied, accepting the offer, but before the Trust had processed his direct debit arrangement it realised he should not be offered a mooring. He argued that the offer was an invitation to treat, that it had been sent to him personally (rather than as part of a bulk mailing), and that it was contractually bound to honour his acceptance of the offer.

50. A corollary of the complainant's argument was that if the Trust had accepted his application to pay by direct debit it would have been unable to require him to vacate the mooring at all. I did not accept his arguments, nor did I accept his point that in law the Trust had made an offer which, if he accepted, it would be bound to accept.

51. The complainant also made an argument that he should be allowed to retain the mooring on the basis that his (widebeam) boat was not a navigational obstruction. Although it was not clear that there would be a significant detriment to navigation at that particular location, I could not question the Trust's right to determine its own mooring rules. I said that in any case the Trust had made it clear at the start of his 12 month mooring agreement that it would not be renewed.

### ***Administration of the Boat Safety Scheme***

52. Case [963](#) was about the BSS, the administration of which is handled by Trust staff. Although complaints about examiners, standards etc are not within my remit, complaints about BSS Office staff member administration, processes and conduct, are. A boat-owner had made a complaint about an examiner, which had led to an investigation into the examiner's conduct, via the procedure known as BSSQA006. While I could not consider that complaint, I was able to consider the Trust's handling of the investigation. It said that complicated cases typically took 3-6 months, but in this situation it took more than 12 months. I did accept that the Trust had to adhere to the correct process, and also that there were some delays which were beyond its control. Even so, my view was that the delays had been unacceptably long, and the Trust had consistently failed to keep the complainant updated about the progress of her BSS complaint. The Trust initially offered a £50 goodwill award, but in view of the substantial distress and inconvenience I decided that it should increase that award to £300, which the complainant accepted.

### ***Anti-social behaviour by day hire boat users, and other issues***

53. In case [988](#) a boat-owner who had a mooring in a rural area complained about anti-social behaviour by people on day hire boats. He also complained about overhanging branches at the mooring and the Trust's 2015 Council election process.

54. There is an overlap of responsibilities for safety, for hire boaters, in terms of both education and enforcement. Although hire boat operators may provide briefing sessions, lessons may be ignored. I accepted that there were instances of anti-social behaviour, but the ability of the Trust to police such situations is limited. The complainant wanted the Trust to make changes in the way boat hire companies operate, such as requiring them to take more responsibility for the actions of the hirers, and also requiring hirers, for example, to enter into short-term licence agreements so they would be subject to the same sanctions as full licence-holders. However, such changes would have implications far beyond this complaint. They were, in any case, primarily matters of policy, which are outside my remit. The Council election issues were also matters of Trust policy, and therefore outside my remit.

55. Taking into account the issue of the Trust's delays in dealing with the overhanging branches, I did accept that there had been shortfalls in the Trust's customer service, but although I decided that the Trust should increase its original offer of a £25 goodwill award to £100, the complainant did not accept my conclusions.

### ***Maintenance of a strip of land owned by the Trust***

56. Case [989](#) was a complaint by a person living on a road backing onto a canal in London. The Trust owned a narrow strip of land between the houses and the canal, but some 35 years earlier the Trust's predecessor, British Waterways ("BW"), had leased it to the Local Authority ("LA") in order to divest itself of a maintenance burden. The lease stated that the LA must at its own expense maintain the land and keep it in good repair and condition, and that the Trust would be entitled to carry out works at the LA's expense if the LA defaulted on any of the provisions in the lease.

57. The complaint was that a neighbour had erected a shed on the land, without permission, and also that the land was in a poor state of maintenance. The complainant had been trying for some time, but with little success, to get the Trust to deal with the situation. The LA had decided not to take enforcement action in respect of the shed, nor had the Trust objected. As the LA is not in my jurisdiction I could not require it to do anything, nor could I require the Trust to object to the shed.

58. Noting that BW's aim in divesting itself of the land was to relieve itself of a maintenance burden, and also that the Trust did seem to accept that it was in a poor state of repair, I decided that the Trust should write to the LA, pointing out its maintenance obligations. The Trust had originally made an offer of a goodwill payment of £50 to reflect its shortfalls in dealing with the complaint, which I maintained and which the complainant accepted.

#### ***Termination of the lease on a business unit owned by the Trust***

59. In case [990](#) the complainant had rented a business unit from the Trust, on a 10 year lease. He and the Trust had negotiated an initial three month rent-free period, but when the first rental payment became due after that time he did not pay it, nor did he pay the service charges. The Trust took steps to recover the arrears, and eventually sought and obtained a Court Order, which stated that he must pay all sums due or forfeit the lease. He did not pay, and when the Trust started the debt recovery process he complained that he had been treated unfairly. He argued that the Trust's actions had meant that he had been unable to proceed with his business plans, and he wanted cancellation of all the charges as well as compensation for what he said was the loss of his business.

60. The allegations of unfair treatment were multiple and serious, and I decided to visit the location and talk to Trust staff. On careful analysis of the evidence from both sides, and taking into account the Trust's comments at the meeting, I did not accept the complainant's key arguments. He had been aware of the debt and did not contest it at the time. It was clear that he had willingly entered into a binding contractual agreement to pay the rent and other charges, and that a County Court had ordered him to pay the charges, which was a decision I could not overturn. I found no evidence of maladministration, and I did not uphold the complaint. I could see no reason why he should not remain liable for the charges.

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

61. I upheld one complaint, and either upheld in part, or upheld elements of, four other complaints. In case 963, which I upheld, the complainant accepted the report and the award, which the Trust paid within the required period of 20 working days. In cases 932 and 972 there were no remedies, but I proposed a financial remedy in the other two cases. As I stated in paragraph 54, the complainant in case 988 did not accept my decision, so the Trust was not required to implement the remedy. In case 989 the complainant did accept my decision. The Trust had some difficulty contacting the complainant, and while the award was paid, it was not until June 2018. The Trust did write to the LA.

#### **Service standards**

62. The service standards set by the Committee for the Scheme are as follows:

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

63. Both targets have been exceeded or reached during 2017-18:

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

## Contacts with stakeholders

64. During the year I have attended:

- the annual conference of the Ombudsman Association in May 2017; and
- the Manchester & Pennine Waterway Partnership Annual Outburst in June 2017.

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

## Surveys

66. This was the second full year of using a customer survey to record complainants' experiences of using the Scheme where I had accepted the complaint for investigation. I ask complainants to complete the survey before I issue my draft report, as the intention is to measure their experience of the service without being influenced by the outcome of their complaints. The survey is short, with nine questions. The first eight ask respondents to click on a radio button to rate their experience (for example, question 1 has a range from "very easy" to "very difficult"), and values from 1 to 10 are attributed, 10 being the most positive.

67. I issued 13 invitations, and eight responded. Questions 3 and 9 are optional. The questions are:

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

## Responses

Survey	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8
1 (932)	10	10	-	10	8	10	9	10
2 (909)	10	10	-	10	10	10	10	10
3 (956)	10	10	10	10	10	10	10	10
4 (963)	3	10	8	10	10	10	10	10
5 (972)	10	10	-	9	9	10	10	10
6 (974)	10	10	-	10	10	10	10	10
7 (978)	10	10	9	10	10	10	10	10
8 (990)	6	9	-	7	9	9	8	7
<b>Average</b>	<b>8.6</b>	<b>9.9</b>	<b>9.0</b>	<b>9.3</b>	<b>9.3</b>	<b>9.9</b>	<b>9.6</b>	<b>9.6</b>

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

“It has been a very positive experience.”

“Things should have never got [to the Ombudsman] this far, if dealt with straight away.”

“The only question that was not answered about the process was, what could the ombudsman do if CRT did not provide him with the information he requested. CRT took a great deal of time, and this has had a negative effect on a third party involved in the complaint. CRT could well be asked to recognise that complaints to CRT are not made lightly, and peoples' lives have been affected.”

“I had been dreading referring to the Ombudsman because I thought it would entail mountains of work. It was quite the opposite. Very impressed.”

### **Conclusions**

69. This has been my fifth full year as the Waterways Ombudsman. Once again, the range of casework is extremely diverse, although the absolute numbers of enquiries and investigations have both fallen slightly. As I have already noted, the average complexity of investigations has increased. Complexity is to some extent a subjective quality, but even taking this into account, the cases this year have in general proved more challenging than in recent years.

70. Following the Trust's increased levels of enforcement of its guidance for boaters without a home mooring I did see an increase in the number of complaints last year, but this year the numbers have fallen back.

71. Once again, some of the complainants have disagreed with the Trust's interpretation of the law. It is not the role of an Ombudsman to make determinations on how the law should be interpreted, although it is sometimes necessary for me to acquaint myself with what the law states, in order to set the context for the complainants, and explain why, if that is the case, I have not upheld a complaint.



Andrew Walker  
Waterways Ombudsman

## Eligible cases for investigation which were completed during the year 2017-18

I publish the summaries on the website, so they are usually available shortly after the investigation is completed.

The list below provides a headline description of the complaint. Please click on a case number to be redirected to the summary on the website.

### List of investigated cases

[Case No 909](#) – the way the Trust dealt with a situation where HS2 would cross one of its canals

[Case No 932](#) – unauthorised residential use of moorings at a marina

[Case No 942](#) – charges made by the Trust for a domestic water supply pipe crossing its land

[Case No 953](#) – problems with the licensing of a boat

[Case No 956](#) – the issuing of a restricted six month licence for a boat without a home mooring

[Case No 963](#) – the administration of the Boat Safety Scheme

[Case No 966](#) – the issuing of a restricted six month licence for a boat without a home mooring

[Case No 972](#) – the Trust allowing a third party to register a strip of land adjacent to a canal

[Case No 974](#) – the closure of a long-term mooring

[Case No 978](#) – nuisance from boaters at a visitor mooring

[Case No 986](#) – the refusal by the Trust to allow a moorer to renew a mooring agreement

[Case No 988](#) – anti-social boaters, dealing with overhanging branches, and the Council election process

[Case No 989](#) – the Trust's alleged failure to fulfil its obligations regarding a strip of land between the complaint's property and a canal

[Case No 990](#) – the treatment by the Trust of a tenant after he had signed a lease for a business unit

