



THE WATERWAYS  
**OMBUDSMAN**




Annual Reports of

The Waterways  
Ombudsman Committee

and

The Waterways  
Ombudsman

**2007 - 08**



# Annual Reports of The Waterways Ombudsman Committee and The Waterways Ombudsman for 2007-08

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# Annual Report of the Waterways Ombudsman Committee for 2007-08

## The Committee and the Ombudsman

1. This is the third annual report of the Committee, covering the period April 2007 to March 2008. The Committee was established in 2005 to oversee the operation of the Waterways Ombudsman Scheme and the independence and accessibility of the Waterways Ombudsman.

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; and
- 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.)

2. The Committee has eight members. Of those, three (including the current Chairman) are independent and three are appointed by the British Waterways Advisory Forum (BWAFF) - ie from groups, such as users and businesses, with interests in the waterways. The remaining two members are appointed by British Waterways. Full details of the membership of the Committee are given at the end of this report. During the year Mr Terry Tricker's term on the Board of British Waterways ended and his place on the Committee was taken by Mr John Bridgeman CBE. Shortly after the year end the BWAFF reconsidered their nominations to the Committee. Mr Nigel Stevens retired from the Committee (having taken up the Chairmanship of the BWAFF) and his place was taken by Mr Geoff Ashton, whilst the other two previous BWAFF nominees remain as Committee members. This seems an appropriate time to record the Committee's appreciation of the valuable contribution to their work made by Mr Tricker and Mr Stevens.
3. The Committee met twice during the year: in May 2007 and in March 2008. Minutes of the Committee meetings are available on the Waterways Ombudsman scheme's website at [www.waterways-ombudsman.org](http://www.waterways-ombudsman.org).
4. The term of office of the Committee's Chairman was due to end on 30 April 2008. In March 2008 the Committee decided unanimously to invite the Chairman to serve a second term in that role.
5. The term of the Ombudsman was due to expire on 30 June 2008. In March 2008 the Committee also approved unanimously a proposal that the Ombudsman should be re-appointed for a further term of three years.

## The Scheme

6. At each meeting the Committee considered reports from the Waterways Ombudsman about the operation of the Scheme. Those covered matters including:
  - complaint workload and management;
  - publications and publicity for the scheme;

- contacts between the Ombudsman and stakeholders;
- funding of the scheme; and
- future work plans.

7. In particular, in March 2008, the Committee considered a report from the Ombudsman on how the scheme measured up against principles published by the British and Irish Ombudsman Association in its 'Guide to Principles of Good Complaints Handling'. They noted that generally the Scheme measured up well against those principles, but agreed with the Ombudsman that some further documentation of formal policies, procedures and standards should be undertaken to improve transparency and accountability.

### Customer satisfaction

8. During the year the Committee approved arrangements for a rolling customer satisfaction survey, with a questionnaire being sent to the complainant following completion of work by the Ombudsman on each complaint or postal enquiry and forms being returned to the Committee Chairman. The first forms were sent out in January 2008 in respect of cases completed from late November 2007. By the year end too few completed forms on postal enquiries had been received to make analysis worthwhile, but 11 of the 15 forms sent on completed cases had been returned. Whilst there were still too few of those to provide statistically significant results initial analysis showed that:

- 73% thought the Ombudsman understood their concerns fairly or very well and the same proportion thought the decision was explained fairly or very well;
- 80% thought the service was fairly or very sympathetic;
- 60% said the service was very or fairly fair (and two said it was not at all fair);
- 50% said the service was very slow, though 30% said it was not slow at all;
- three complainants said they were very satisfied with the way their complaint was dealt with, whereas four were very dissatisfied and the rest fell in between; and
- 64% said they would recommend to friends or family who had an unresolved complaint about British Waterways that they should contact the Waterways Ombudsman service.

General comments made included that more weight should be given to the views of complainants and that the Ombudsman should be given more powers.

9. The Committee were not surprised at the concern about the speed of the service, as the forms covered cases handled during a period when the Ombudsman experienced a large surge in work and some delays did occur because of that and because of delays in some replies from British Waterways. The workload issue is to be addressed by recruiting people to assist the Ombudsman in any future upswing in workload. More generally the Committee felt the forms reflected a reasonable level of satisfaction with the Scheme, when inevitably a number of complaints are not upheld and that decision will tend to affect the wider comments made by those complainants.

10. Any complaints about the operation of the scheme were sent to the Chairman and these were always thoroughly investigated and responses provided by him.

### Conclusion

11. The Committee have been satisfied with the operation and funding of the scheme during 2007-08. They will continue to keep matters under scrutiny during 2008-09.

## Members of the Committee - during 2007-2008

### Chairman

**Professor Jeffrey Jowell QC**, Professor of Law, University College London; Practising barrister at Blackstone Chambers; a member of the Royal Commission on Environmental Pollution and UK Member of the Council of Europe's Commission for Democracy through Law ('The Venice Commission').

### Other Independent Members

**Michael Reddy**, Deputy Adjudicator and Chief Executive of the Office of the Independent Adjudicator for Higher Education, previously an Ombudsman of the Financial Ombudsman Service.

**Miles Smith**, a solicitor, was, until 2005, Director of Corporate Services and statutory monitoring officer with the London Borough of Croydon. Subsequently he was an Associate Director with KPMG Advisory and now manages his own public sector consultancy company.

### Members appointed by British Waterways Advisory Forum

**Ann Davies**, co-proprietor of Napton Narrow Boats, a hire boat and marina business located in central England and former chairman of the Association of Pleasure Craft Operators (APCO), Chairman of the British Hire Cruiser Federation.

**Sam Hollis**, a solicitor at Couchman Harrington Associates, a sports business law firm.

**Nigel Stevens**, director of Shire Cruisers and a former Chairman of the London Branch of the Inland Waterways Association and a former Chairman of APCO.

### Members appointed by British Waterways

**A Board Member of British Waterways.** For the first part of the year this was:


**Terry Tricker**, Chairman of British Waterways' Fair Trading and Remuneration Committees; formerly a Board Member of Severn Trent Water Ltd and a chairman of an NHS Hospital Trust.

For the latter part this was:

**John Bridgeman CBE**, Chairman of British Waterways Fair Trading Committee and Member of the Audit Committee; Independent Appeals Commissioner for the Direct Marketing Authority and Independent Complaints Adjudicator to the Authority for Television on Demand. Formerly Director General of the Office of Fair Trading and a Member of the Monopolies and Mergers Commission.

**Nigel Johnson**, Legal Director of British Waterways and formerly Chief Solicitor to Cheltenham & Gloucester plc.

THE WATERWAYS  
**OMBUDSMAN**



**Annual Report of the Waterways Ombudsman for 2007-08**

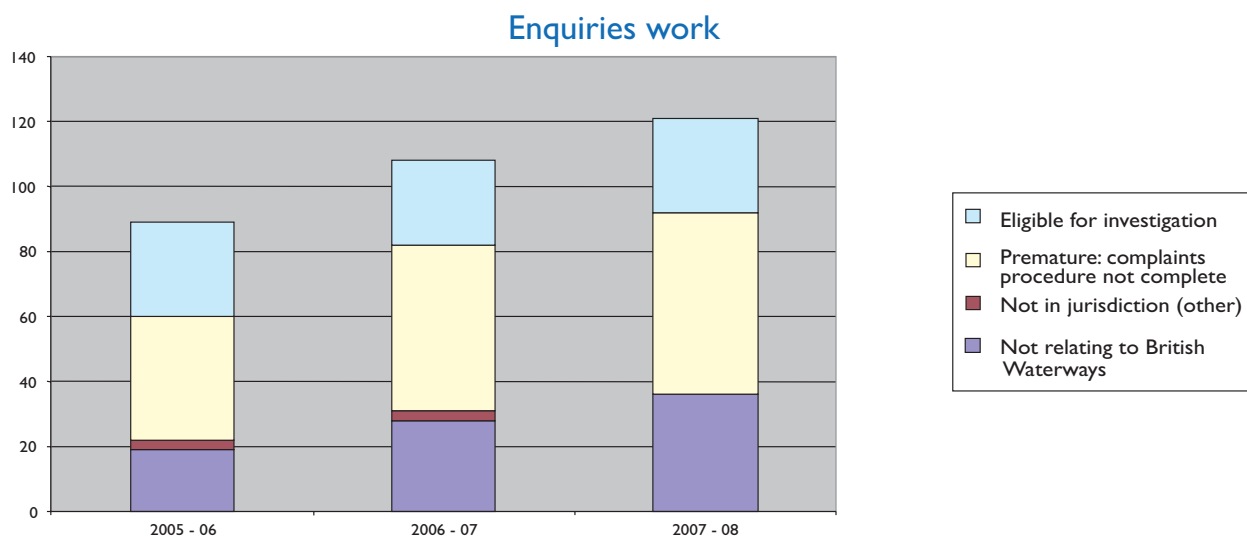
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## Introduction

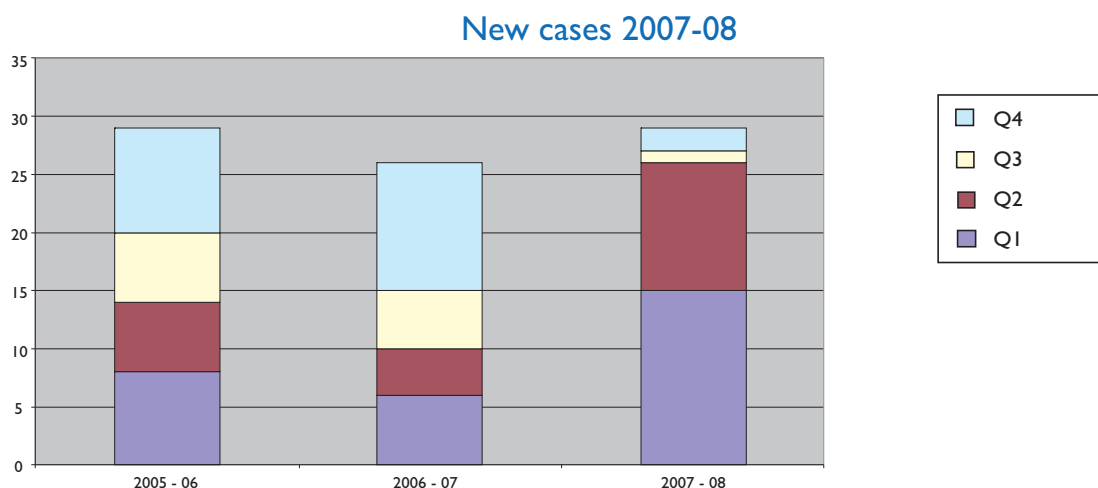
1. This is my third annual report as Waterways Ombudsmen. It covers the period from April 2007 to March 2008, which has been the busiest year so far.

### Casework - workload

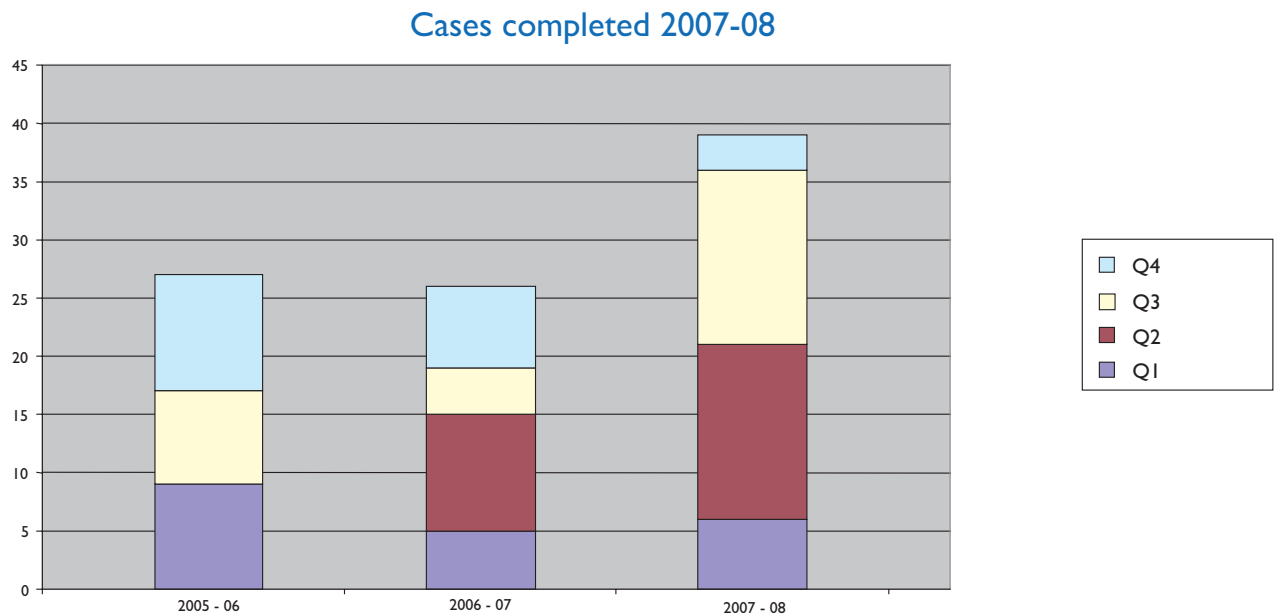
2. The number of enquiries has risen by 12% from last year to 121, mainly because of a high number (43) of enquiries in the first quarter. I had hoped that the availability of information on the website might reduce the number of complainants approaching me about organisations other than British Waterways, but unfortunately that has not so far proved to be the case. See Annex A for more details of enquiries.



3. The number of new cases accepted as eligible for consideration remained similar to that in the previous two years: but was extremely unevenly distributed during the year. Following receipt of the highest ever number of new complaints in the final quarter of 2006-07, even more were received in the first quarter of 2007-08 and nearly as many in the second quarter. But the numbers were much lower in the final two quarters. This is not surprising since the number of complaints considered by British Waterways fell significantly during the same period. The early indications for 2008-09 are that numbers are picking up again but not to the same level as in the first part of 2007-08.



4. Work was completed on 39 complaints during the year, 50% more than last year.



In three cases, rather than carrying out any detailed investigation, I was able to bring about an early resolution of the matter to the complainant's satisfaction. Following an investigation, the complaint was upheld in whole or in part in a further 12 cases. In two cases I discontinued an investigation without being able to draw a firm conclusion. The remaining complaints were not upheld.

5. During the year 31% of cases were completed within 3 months, 74% within six months and 92% within 9 months: 8% (3 cases) took more than a year. This is an improvement on last year despite the increased throughput, but is still slower than I would have liked. Some cases were delayed whilst waiting for information requested from British Waterways. Some cases, particularly the more complex ones, did have to queue for attention because of the large increase in new cases in the first two quarters of the year. However by the end of the year there were only five cases ongoing (compared to 15 at the end of 2006-07), though two had queued for some time and were more than a year old. Work has since progressed on those.
6. Not surprisingly most complaints were from boaters. Most of those (and more the half the total) related to moorings, and 12 of those related to the setting of mooring fees. One was from a commercial boat operator. However again there was also a significant number (seven) from neighbours of the waterways: people who live or work near British Waterways' land and who had concerns about use or maintenance of that land or the waterway itself. One of those concerned fishing rights. Another two were from tenants or former tenants of British Waterways. One was from a cyclist and another from a pedestrian: both of whom had suffered accidents whilst on British Waterways' land. Most investigated complaints were about the actions of British Waterways themselves, but two related to British Waterways Marinas Limited (BWML). Three complaints related to Scotland and one to Wales: all the others related to England.



## Issues arising from complaints

### Complaints handling

7. Last year I commented on the continued use by British Waterways of a significantly out of date complaints leaflet. I am pleased to say that during the year both the complaints section of British Waterways' website and their complaints leaflet were updated to reflect arrangements at the time and I was grateful for the opportunity to comment on what is now included about the work of the Ombudsman scheme. British Waterways have also now adopted and published policies on dealing with unacceptable behaviour and unreasonable persistence by complainants. Whilst such behaviour is demonstrated by a tiny number of complainants it is good practice to have clear policies of this sort to clarify how such matters will be handled.
8. Less positively, whilst the majority of complaints appear to progress reasonably well in accordance with the complaints system, I came across several instances (compared to only one last year) where letters seem to have been lost, mislaid, ignored or not put into the complaints system even though it should have been clear that they amounted to complaints. This really is not acceptable. In some cases I was able simply to help obtain a response for the complainant and that seems to have resolved matters. However in three cases this led to me using my powers to consider complaints which had not completed the complaints procedure, because the procedure had failed in its operation and I felt that in the particular circumstances that it would be unfair to the complainants to ask them to resubmit their complaints under the procedure. There was no clear pattern to the problem, suggestive of a systemic failure, and I fed back my concerns about each case as it occurred so that any lessons could be learned.
9. Disappointingly, in the first part of the year, some problems continued similar to those reported last year in implementation of actions agreed by British Waterways under its own complaints procedure. In two unconnected cases (nos 194 and 282) promised letters were not sent until I became involved and asked for copies and in another case (case no 286) agreed compensation was not paid for nearly three months, until I intervened. Encouragingly I did not see similar problems in the implementation of such actions in the second part of the year. In October 2007 in response to a recommendation I made in case no 194, British Waterways told me they were adopting a new system of logging and monitoring implementation of actions promised during their complaints procedure.
10. As planned during the year, I improved my own procedures for following up on my own recommendations and that has proved very useful. Whilst generally responses to my enquiries and recommendations have been reasonably timely, there have been a number of cases where there have been significant delays before my recommendations have been implemented, without any contact from British Waterways to explain why (if there were good reasons). As well as chasing up individual cases I have also already made clear my concern about this to British Waterways: it does nothing to improve confidence in the complaints system or British Waterways if they fail to deal properly with my enquiries and recommendations. I hope that British Waterways will now take action to make sure that I will be able to report next year that this has not been a problem.

### Moorings

11. As noted earlier I received 12 complaints about mooring pricing: more than ever before. (All

of these related to the original system: not the tendering trial.) It is not for me to say exactly how British Waterways should go about pricing (or allocating) moorings, especially when there is no one obvious right or fair way to do that, nor a simple formula by which a 'correct' price can be calculated. I am an Ombudsman, not a regulator who might have wider powers to intervene over pricing. I have no power simply to say that British Waterways should be charging one price rather than another, so long as they have considered matters in a reasonable way and in line with their own policy and guidance on setting mooring prices. That says that they set prices at market rates and indeed that is what the government requires them to do. They might also be open to challenge from independent marina operators if they did not do so. Guidance they give to staff explains in some detail how they should assess market rates. This involves comparing prices and facilities at their own and private sites, as well as the current demand for each of their own sites.

12. Some of the complainants argued that it was unfair for British Waterways to take into account the availability of other facilities in the area which British Waterways do not themselves provide, but I could see that in the same way the value of a house might be affected by being in the catchment area of a good school or close to good transport facilities, amenities in the area which are not managed by British Waterways might make a site more attractive and increase the market rate. Nor could I see that price rises above inflation meant that there had been maladministration or unfairness; where demand exceeds supply then the market rate may rise more than inflation. I considered carefully all the different arguments raised by complainants in each case, but in the end had to focus on whether the system had been properly followed and whether any failings might have resulted in a mooring being overpriced. I did not often find evidence of that and so was unable to uphold most of these complaints.
13. I am of course aware of the strong views of some boaters about the mooring tendering trial and the subsequent consultation. The current system is quite complex and the different comparison sheets used at different times to describe and compare sites were rather confusing. Whatever system of pricing and allocation is to be adopted in future, it is in the interests of all concerned that it is very carefully thought through, easy to understand and easy to monitor.

### **'End of Garden' Moorings**

14. Some of the complaints about moorings related to the particularly sensitive issue of moorings adjacent to land not owned by British Waterways, often at the end of someone's garden. I was very surprised to find that British Waterways did not issue to people paying for 'end of garden' mooring permits any terms and conditions. In particular they did not inform prospective purchasers of a permit that the fee did not cover the cost of any dredging which became necessary at the mooring, when most people would probably assume that it did. It is up to British Waterways to decide whether to offer permits which cover such dredging or not (and to price any permit accordingly): but it seemed wrong to me that people were not being told clearly what they would get if they chose to pay for such a mooring. I was pleased that British Waterways accepted the point and recognised that terms and conditions should be provided in respect of 'end of garden' mooring permits in future.

### **Dredging for freight**

15. Because of interest being generated, I published earlier in the year a summary of the report on a complaint (no 181) about British Waterways' reluctance to give a freight operator a commitment to comply with statutory maintenance obligation. Although I appreciated that

maintaining the waterways in a suitable condition for use by freight vessels could be quite costly, while a statutory obligation existed, I could not condone a failure to commit themselves to complying with that. I was pleased that British Waterways changed their position following my intervention.

## **Customer Service Standards**

16. In my last annual report I encouraged British Waterways to make it clearer to their moorers what service standards they could expect at a British Waterways' mooring. Since then British Waterways have developed and published a very broad set of service standards covering a range of aspects of their work, which are being introduced in 2008 and 2009. Whilst they do not specifically cover individual moorings, I hope that in a similar way they will help to make clearer to customers what they should be able to expect, and to staff what the sort of service they should be aiming to provide. Whilst breach of a service standard on its own may not provide evidence of maladministration, I can see that the standards may be helpful in my consideration of some complaints in future.

## **Publicity, and contacts with stakeholders and other bodies**

17. The freight report attracted most publicity for the scheme during the year and I was invited to write a short piece for the Commercial Boat Operators Association. I also managed to generate a little more interest in the annual report from the waterways press.
18. During the year I have attended:
- the Inland Waterways Association reception at the National Waterways Festival at St Ives;
  - British Waterways' Annual General Meeting;
  - the London Boat Show at the invitation of the British Marine Federation.
19. At these events I met representatives from a range of stakeholder organisations, as well as the hosts. I also had a private meeting with the Chair of the Inland Waterways Advisory Council to discuss issues of mutual interest.

## **Implementation of plans for the scheme**

20. During the year as planned I also:
- worked closely with the Committee on developing a customer satisfaction scheme. I now send out a survey form to complainants, a few weeks after completion of each investigation and postal enquiries (see the Committee's report for the initial outcomes of that);
  - reported to the Committee on how far the scheme met best Practice standards laid down in BIOA's 'Guide to Principles of Good Complaint Handling';
  - reviewed options for improving the Scheme's ability to respond more quickly to fluctuations in workload. With the Committee's agreement, I am setting up a small panel of people (experienced in working for an Ombudsman) whom I can call on to provide assistance in handling complaints at particularly busy times. However I will continue to be responsible for all decisions.

## Plans for 2008-09

21. During the year, as well as my usual work on individual complaints and liaison with stakeholders, I plan to:
- review further findings from the customer satisfaction survey, once a more significant sample of data has been gathered and to take any necessary action to improve customer focus;
  - develop more documentation on formal policies, procedures and standards following the review against the BIOA guide;
  - complete arrangements for appointing assistants who can be called upon to help with sudden increases in work, to reduce the risk of delays.
22. I was pleased to be able to accept the Committee's offer of a second term as Waterways Ombudsman, and I look forward to building on the work of my first three years.



Hilary Bainbridge  
Waterways Ombudsman

## Detailed data on enquiries, 2007-08

Group		
A	Not relating to British Waterways	36
B	Premature: internal complaints procedure not complete	56
C	Not in jurisdiction (other)	0
D	Eligible for investigation	29
Total		121

### Group A

Five of the complaints related to waterways managed by organisations other than British Waterways. Where I could I referred complainants on to an appropriate complaints system, but in several cases no such system apparently existed. I also referred all the other complainants on to a suitable complaints system if I could. As previously, a significant number (21 of these complaints) related to water supplies, though they covered a very wide range of consumer issues. The example below helps explain why I have received some water utility complaints.

#### Case example

A man wrote seeking help in resolving problems his elderly neighbour was having with a water utility company. He said he had found the Waterways Ombudsman scheme's details listed on a legal advice website as the organisation to contact about such problems. I checked on the website myself and found that the complainant was quite correct. I contacted the website's managers to point out their mistake and ask them to correct it. They apologised and did so. I replied to the complainant telling him what I had done and gave him contact details for the Consumer Council for Water, which does deal with complaints about water companies.

### Group B

This group includes all enquiries made relating to British Waterways, which might be in my jurisdiction, but which have not yet completed the complaints procedure. A few of these are more requests for information than complaints. However most of these enquiries are from people with a grievance about the actions of British Waterways, but who approach me prematurely (i.e. before completing British Waterways' complaints procedure). I encourage them to use and complete the internal complaints procedure, and to come back to me if they remain dissatisfied when they have done that. I rarely know the outcome, unless I later receive an eligible complaint, after the internal complaints procedure has been completed.

## Case example

A man wrote to me about flooding in his street, which he believed was attributable to failings in the way British Waterways had carried out renovation works to a local canal. His original letter was sent just before widespread flooding occurred in that part of the country in the summer of 2007. I advised him that he needed to use British Waterways' own complaints procedure, before I could consider matters. He wrote back a month later to say that immediately after receiving my previous letter he had written to British Waterways' local office by recorded delivery but received no reply or acknowledgement. I contacted complaints staff at British Waterways' head office who checked with the local office, and told me they could find no trace of the letter. Head office staff offered to make sure a further letter did not go astray and I advised the complainant to write again to the head office, which he did. Subsequently British Waterways told me they had found the complainant's original letter on the desk of a member of staff who had been off sick for three weeks, and that it had been being treated more as a request for information rather than a complaint.

The complaints in Group B covered a very wide range of issues, including issues about moorings and marinas and administration of fees, but also complaints from waterways businesses, and neighbours of waterways land and, for example, complaints about access for fishing for disabled people and about parking enforcement at a British Waterways' site.

## Group C

There were no complaints which fell completely outside my jurisdiction even though they had completed British Waterways' own complaints procedure (though this is possible, for example with complaints about matters which occurred several years ago). However there were a few which would not have been in jurisdiction even if the complaints procedure had been completed: those included one from a business with a turnover of well over £1m, and one referring to events in the 1990s.

## Summaries of decisions on all eligible cases

### Index of cases

- Cases No 137 & 165 - handling of consultation in 2005-06 about the fee structure for boat licences
- Case No 142 - alleged victimisation of complainant
- Case No 149 - management of mooring and mooring account at BWML marina
- Case No 165 - see Case No 137
- Case No 176 - charging for 'end of garden' moorings
- Case No 181 - reluctance to give freight operator commitment to comply with statutory maintenance obligations
- Case No 185 - arrangements for alternative mooring
- Case No 188 - handling of issues (including an insurance claim) following an accident on British Waterways' property
- Case No 194 - management of moorings
- Case No 195 - unfulfilled promise regarding a mooring
- Case No 202 - grass cutting on mooring site
- Case No 203 - arrangements for sale of house
- Case No 210 - plans for redevelopment of mooring site and legal bill
- Case No 219 - mooring fees at BWML marina
- Cases No 223, 261 & 267 - mooring fees at British Waterways' moorings
- Cases No 225, 252 & 254 - mooring fees at British Waterways' moorings
- Case No 226 - mooring fees at British Waterways' moorings
- Case No 228 - access to tunnel and security of boat
- Case No 237 - sale of land adjacent to the complainants' home
- Case No 240 - repair of road
- Case No 243 - action on complaints about water leaking from a canal into the complainant's home
- Case No 244 - lack of dredging at 'end of garden' mooring



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- Case No 245 - request for compensation in connection with major works being carried out in the area of a residential boat
  - Case No 248 - guidance on setting mooring prices
  - Case No 249 - refusal to sell land to the complainant
  - Case No 251 - refusal to replace fixed bridge with swing bridge
  - Case No 252 - see Case No 225
  - Case No 254 - see Case No 225
  - Case No 259 - handling of issues relating to fishing rights and land ownership
  - Case No 261 - see Case No 223
  - Case No 263 - mooring fees at British Waterways' mooring
  - Case No 267 - see Case No 223
  - Case No 270 - lack of dredging at 'end of garden' mooring
  - Case No 276 - mooring fees at British Waterways' mooring following previous commitment about phasing of increases
  - Case No 277 - compensation for effects on business of development works on British Waterways' land
  - Case No 282 - action on complaints about noise from boats
  - Case No 284 - handling of request for installation of a gate at moorings in Scotland
  - Case No 286 - failure to pay agreed compensation to cyclist
  - Case No 305 - arrangements for managing access to locks and handling of complaint



## Summaries of decisions on completed cases

This section provides a summary of the decisions on each of the 39 complaints (accepted as eligible for consideration) which I concluded this year.

### Cases no 137 and 165 - handling of consultation in 2005-06 about the fee structure for boat licences

1. Two people complained separately about the consultation in 2005-06 on the licence fee structure so far as it affected boats in shared ownership. I issued one report covering both complaints. One person complained that British Waterways did not properly follow current government guidelines on consultation, that the decision made was unfair to owners of jointly owned boats (and in particular it was unfair to require boats used only for private purposes to hold a business licence if licensed via an agent) and that there was maladministration in way subsequent guidance on licencing of shared boats was produced. The other person complained that, having produced reasonable final conclusions in May 2006 on their policy, without further adequate consultation with those affected, British Waterways wrongly introduced new conditions which unfairly prevented some shared owners of boats from qualifying for private licences.
2. British Waterways had already accepted that they did not comply with certain details of the government's Code of Practice on Consultation. The question for me was whether there were aspects which had not already been adequately remedied. Care was needed in adopting the Code for a comparatively small organisation such as British Waterways. I did question whether it was wise to have the external relations manager both acting as the person to send responses to (which made him appear to be part of the consultation team) – and as consultation co-ordinator (advising the team). I encouraged British Waterways to consider either nominating a different co-ordinator outside the external relations team, or at least not making the co-ordinator the person to whom responses should be sent.
3. The fact that British Waterways had to make major changes following the initial consultation and offer a further chance for comment, did not suggest that they had developed much of an understanding of stakeholders' views prior to the formal consultation (in accordance with the Code). However, whilst I thought that led to the consultation process being far more tortuous than it might have been, I could not see that that failing ultimately restricted the ability of owners of shared boats to contribute to it. British Waterways had already accepted that they wrongly did not include the consultation criteria in some documents, and said that they would be paying meticulous attention to the Code in future. I accepted that the white paper issued in November 2005 could be regarded as a reconsultation. Hence arguably the May 2006 decision document should have been in the format of a summary of responses. To that limited extent I agreed that there was evidence that the Code was still not being followed meticulously.
4. However overall I was not convinced that failings up to January 2006 would have significantly affected the outcome. I had seen nothing to indicate that crucial stakeholders were unaware of the consultation, did not have time to respond, or were so confused about the process that it affected their comments. My investigation showed that the views of some shared owners were in fact highly influential.

5. I explained that matters had moved on since my predecessor reported on a similar complaint (Case No 5 of 2004-05). In particular he had referred in his decision to the then policy of British Waterways of charging a higher rate for boats 'used for business purposes' and pointed out that boats in co-ownership were not used for such purposes. That policy was no longer in place and that significant part of his argument was therefore no longer relevant. I was considering the matter afresh. It was clear to me that:
- there were any number of arguments people could put forward as to why any particular charging methodology was unfair to them;
  - it would be impossible to devise a system which everyone would consider fair;
  - the fact that some people are worse off because a particular policy is adopted does not in itself mean that the policy is unfair;
  - developing a charging system which is reasonably simple and well-defined can be as important to overall fairness as the details of the system itself (ie having a system with ill-defined or over complex categories can be more of a problem to users than a more broad brush approach, with more clearly defined categories);
  - it was not my role to nominate a 'fairest' (or least unfair) charging methodology.
6. I recognised that there was a real dilemma about how to treat boats in shared ownership: especially with a basic system of high and low rates. They do not form a coherent group which are owned and used in the same way. At one end of the spectrum two or three friends may club together to buy a boat, which is used far less than many boats in single ownership and generates no profit for anyone: i.e. very like a sole or family user boat. At the other end a boat may have been bought by a commercial company, which retains an interest and manages the boat whilst selling small shares to a large number of people. The boat may be used and managed very similarly to a hire-boat, including generating profits for the company. I could see why charging the first type at high rate might seem unfair to them and why charging the second at low rate might seem unfair to hire-boat companies.
7. At different times British Waterways put forward different proposals for addressing this dilemma before, in May 2006, they finally decided that the status of the licence applicant should determine the licence category. If joint owners could nominate one lawful keeper (who licenced only one boat) then that boat could be licenced at the lower, private, rate: otherwise it should be licenced at the higher, business, rate. Subsequently they issued 'guidance' which further defined matters. I was not sure that I saw anything sinister in those changes, or in some related points raised by one complainant: but evidence of British Waterways floundering somewhat with the problem. In fact the broad approach adopted in May 2006 was precisely one suggested by some co-owners. I did not suggest that the new system was perfect, and the route to the ultimate conclusion was unduly tortuous and understandably sapped confidence in the process. However I could not see grounds for me to judge that the system adopted ultimately was fundamentally unfair to the complainants, or that any faults in the process were such as to mean that the policy must be scrapped.
8. However I felt it had been a significant mistake, amounting to maladministration, to issue a policy decision in May 2006 before making sure that significant details of the implementation, later to be found in guidelines, had also been worked out. British Waterways needed to make sure that the guidelines would be clear and workable in practice and it would have been wise to seek comments from a range of individuals or organisations with a specific shared ownership

perspective. That would probably have resulted in some issues being ironed out before the document was issued, rather than after. However on the whole the published guidelines clarified the situation. Information was then available for co-owners who might be entitled to a private licence, on how they could go about demonstrating that to British Waterways' satisfaction. I could see why one complainant was anxious about some wording in the guidelines, but the intended meaning was not as restrictive as feared. Furthermore it did not appear that the complainants had themselves suffered because of the adoption of the guidelines (e.g. been made to pay for a business licence, when they could have expected from the May 2006 decision to have had a private one).

9. Draft guidelines had been produced in July 2006, but a final version was not produced and published then. I thought that the explanation that British Waterways did not get round to it, was far more likely than the conspiracy one complainant feared. It seemed much more likely to me that a Director wrongly told the complainant the guidelines had been published in July in good faith: having been misled himself. He had already apologised for that and, in view of the delay in publication, postponed implementation until January 2007.
10. But I did share some concerns raised during my investigation, about the way the 2007 licence terms and conditions were expressed. They did not refer to the 2006 policy or guidance and contained the same wording as in 2003: before my predecessor's decision and the further changes in 2006. Although information about the policy and guidance was on British Waterways' website, I was not able to find it within the Waterscape website. Therefore I strongly urged British Waterways to include at least an appropriate cross-reference to the policy and guidance in the terms and conditions and to make those available within Waterscape. In response British Waterways told me that they had now published the policy and guidance more prominently on Waterscape and were sending relevant information to all customers with their licence renewal notice. The information would also be reflected in the next hard copy re-print of the licence terms and conditions. I was satisfied that in the interim that should be sufficient to avoid shared owners missing out on the scope to obtain private licences, if they might be entitled to them.
11. I thought the other crucial remedial action required was that British Waterways should learn from the experience. Ultimately the measure of that would be whether future consultations ran more smoothly. British Waterways told me that they were confident that a subsequent consultation was being well run and that they would be arranging for the process to be evaluated by someone outside the consultation team, in line with the Code of Practice on consultations. I **recommended** that British Waterways provide me with a draft report of that evaluation, by 31 March 2008, identifying any further action they might then plan to take to improve consultation processes further; and that the final version of the report was published.

### **Case No 142 - alleged victimisation of complainant**

1. Mr and Mrs X complained that Mr X was being 'selectively victimised' following a decision by British Waterways that any future complaints he made should be considered initially by one Director rather than going first to the local general manager in line with the complaints procedure.
2. British Waterways told me that the decision was based not just on Mr and Mrs X's most recent complaint but on the extent and nature of their previous complaints, and the Director's previous contacts with Mr X. They had already apologised for not making that clear at the time of the

decision. Having considered the history of complaints to British Waterways by Mr and Mrs X I could appreciate, to some extent at least, why each party took the view they did.

3. On balance, I took the view that British Waterways had reasonable grounds for deciding that Mr and Mrs X's complaints should be handled slightly differently. Restricting contact to one named staff member, or channelling complaints through one person, can be a helpful approach when a complainant raises large numbers of issues with different people in an organisation. It can help to make sure the organisation provides a clear and consistent response. Some complainants would see having matters being considered at such a senior level as a benefit. I did not uphold the complaint. However I did encourage British Waterways to consider the potential benefits of developing and publishing a clear policy on when the actions of complainants might result in deviations from the usual complaints policy and how such situations would be handled. I also encouraged them to consider reviewing their policy on calculating the time for response to complaints from the date of acknowledgement (one issue Mr X had raised).

### **Case No 149 - management of mooring and mooring account at BWML marina**

1. Mr Y lived on a boat in a marina managed by BWML, having taken the mooring before the marina was transferred from British Waterways. He complained that BWML had:
  - A. Failed to keep accurate records of payments of his mooring fees for 2005 and 2006 and wrongly asserted that certain payments had not been made, even after he had shown staff evidence of payment;
  - B. Either initially misled him about the status of his mooring or wrongly changed its status, as he took the mooring on the understanding that it was residential but had since been told that it was not;
  - C. Wrongly given him an inadequate mooring, as there was room for only half the boat to be alongside the pontoon.
2. BWML had accepted there was some possibility of errors in the account during 2004 when their financial systems were being established. When Mr Y was sent a summary of his account in April 2006 to try resolve disputes over payments in 2005 and 2006, his previous concerns about the system were inevitably confirmed when that showed that he had not made a payment in June 2005. He knew (and during the course of my investigation BWML accepted) that he had paid. After a Director responded to his complaint in September 2006, he was told the amount he then owed for 2005 was more than twice what a summary he had been sent in April 2006 showed he owed for the same period. (The figure for 2004 had also changed.) I could see why anyone would see those things as confirming their doubts about any figures provided, and would have grave doubts about any further figures produced. The figures I was given during my investigation were different again. I did not find any substantial documentary evidence that those final figures were significantly wrong. The only payments (other than that of June 2005) still at dispute were precisely those for which Mr Y was not able to produce a receipt. In so far as Mr Y was given incorrect information in April 2006, in particular a suggestion that he had not made a payment in June 2005 when he undoubtedly had, that was maladministration and I upheld his complaint.
3. During my investigation I found evidence which supported Mr Y's account of his planned move from mooring on a non-residential basis to a residential basis. By checking copies of invoices, I found that Mr Y had been invoiced on a residential basis in March 2004. That established

that he had been accepted then as a residential moorer (even if he did not sign an agreement on that basis), contrary to the implication of what BWML initially told him, the Director and me. I could not see that information provided to moorers following the marina's transfer to BWML from British Waterways in 2004 would have alerted residential moorers to the possibility that the new Grade I mooring category would not afford them residential status. However that did not seem to have caused Mr Y a problem until he needed to claim housing benefit. Furthermore, he seemed to have been refused benefit, not because of the designation of the mooring, but because of an alleged lack of adequate planning permission for residential use (and possibly the lack of a right to exclusive use of a particular berth). Anyone offered and paying for a 'residential' mooring by British Waterways or BWML should be able to expect that the mooring will have adequate planning permission for residential use, such that any doubts about that will not affect their entitlement to benefits. That was not the situation Mr Y found himself in. I regarded the failure by BWML and British Waterways in that regard as maladministration.

4. However, by the time of my report, another moorer at the marina had successfully appealed against a similar refusal of housing benefit. It therefore seemed very likely that had Mr Y appealed against the Council's decision, he would have won and received benefit: albeit potentially very belatedly. Nevertheless the maladministration had caused injustice to Mr Y, as he should not have been put in the position where doubts about the planning status of his mooring could lead to an initial refusal of benefit, the need to appeal and a potentially significant delay in receiving payment.
5. Had British Waterways and BWML acted properly regarding the planning permission and residential moorings, they would either have obtained any necessary additional planning consent or would not have offered Mr Y a mooring on a residential basis (in which case he would presumably have found another residential mooring elsewhere). In either case, whilst I could not judge his entitlement to benefits, his experience when applying for housing benefit would have been different and he might well have received it without any difficulty. However, it was probably too late for Mr Y to appeal in the normal way. I **recommended** that British Waterways and BWML (whom I held jointly responsible for the problems in this regard) should ensure Mr Y's mooring fees for the boat he lived in were waived for the period for which his housing benefit claim was rejected.
6. I could see why the way matters were handled, and the conflicting figures given, caused Mr Y to have grave doubts about the figures and made him reluctant to accept those provided later. Sadly this had led to a loss of trust, when good relations were particularly important when Mr Y's boat was his home. I could see that it would have been unnecessarily stressful. All those issues were significant injustices for which remedial action was required. I believed that Mr Y was entitled to compensation for the effects of these events. I also thought that further assurance was needed that mooring accounts were now being managed properly. I **recommended** that BWML withdraw any claim for other particular outstanding payments: by my calculation that amounted to compensation of just over £1000. Their previous offer to write-off any possible debts from 2004 should also be adhered to. As a gesture of goodwill after seeing my report, BWML also offered to write off a further smaller sum which, by their reckoning, would be still be owed following the compensation I recommended. I also **recommended** that BWML arranged an audit of the operation of mooring accounts at the marina for 2006-07, provided a copy to me within six months and acted on any recommendations made by the auditors.



7. I did not find any evidence to suggest that BWML were not entitled to give Mr Y his present mooring as an alternative to the original one, and I did not uphold that aspect of his complaint.

### **Case No 165 - see Case No 137**

### **Case No 176 - charging for 'end of garden' moorings**

1. Mr Z put a complaint to me on behalf of a group of people who moored boats at the same site. Their moorings were adjacent to private land (owned by a third party) in an industrial area. The group complained that British Waterways had failed properly to follow their own procedures for setting prices for their 'end of garden' moorings and had neither set the price fairly nor explained adequately why it was reasonable to set the price at that level. Mr Z argued that British Waterways were not entitled to charge members of the group to moor but that if they were, they were wrong to charge so much.
2. I saw no reason why British Waterways were not entitled to charge group members for exclusive use of the water space over which they moored their boats, in the same way the Courts had decided charges could be levied in 1992. Mr Z had also argued that Section 20 of the British Waterways Act 1995 prevented them from charging for mooring against the canal wall. However Mr Z had not provided any evidence which established that Section 20 applied. I could see nothing before me which convinced me that British Waterways were not entitled to charge moorers. However I could not give a definitive view of the legal situation – only the Courts could do that. If I was mistaken the complainants were entitled to pursue matters in the Courts.
3. There were two main parts to Mr Z's arguments on the question of price setting: first that the policy, on setting the rate at 50% of a comparable site where the mooring fee covers land access as well as the use of the waterspace, was wrong; and second that the sites used for comparative purposes had been wrongly chosen and that the facilities and environment at the sites had not been compared properly.
4. I suspected that there might be a number of reasonable ways a charge for end of garden moorings could be set, but I could not see the complainant had established that the way chosen by British Waterways was so unreasonable as to deserve my criticism. If the Group believed that there were legal reasons, in terms of Fair Trading legislation, why the approach chosen was wrong (as they had suggested), then it was open to them to approach the Office of Fair Trading.
5. I then turned to the question of the comparator sites used. The price for 2006-07 had been set at 50% of the cheapest British Waterways mooring in the area, which British Waterways had argued (at one point) amounted to a 25%-30% reduction on account of the nature of the area (since, British Waterways argued, the group's site had more facilities than the comparator and that also need to be taken into account). Although the briefings for managers on applying the policy were not as clear on the point as they might be, I could see some force in the group's argument that the briefings indicated that the comparison should always be with a basic site (i.e. with no onsite facilities) but in a comparable environment. I therefore took the view, on balance, that under the pricing policy the price should have been set with a reduction from the price of the cheapest basic comparable more rural sites, to take account of the comparatively poor, industrial environment of their moorings. To that extent I upheld the complaint.

6. I **recommended** that British Waterways:

- 1) set the mooring charge for 2006-07 at 36.25% (ie a 27.5% reduction on the 50% rate) of the price of the comparable basic British Waterways moorings ie £19.47 per metre;
- 2) make a similar reduction for the price back to January 2005, using similar comparable moorings;
- 3) reduce the invoices for the period up to January 2007 by a further 20%, in line with a commitment previously, given as compensation for the way some other matters had been handled;
- 4) that British Waterways consider, and report back in the next six months, whether and how the approach to setting prices for end of garden moorings could be made clearer in future.

**Case No 181 - reluctance to give freight operator commitment to comply with statutory maintenance obligations**

1. The complainant runs a business involved in transporting freight on canals and rivers. He had the possibility of obtaining a contract to move freight on part of the river Severn. However that would depend, amongst other things, on the river being maintained to a sufficient depth. He complained that British Waterways had wrongly failed either to maintain the East Channel of the Severn in Gloucester in a suitable condition for his commercial vessels to use, or to give him an adequate assurance that they would do that once he was ready to use the channel.
2. Under the Transport Act 1968 British Waterways have a duty to maintain the main channel of this part of the river in a suitable condition for use by commercial freight-carrying vessels. They had never disputed that. Instead they had raised various other issues in response to the complainant's concerns. They referred initially to the fact that that part of the river, they said, was used only once for freight after previous dredging and expressed reluctance to dredge again without a certainty of use. Whilst British Waterways' legal obligations are not dependent on the likelihood of use, I would not have pursued a complaint such as this unless it was from a complainant with a real prospect of use: as otherwise there would be unlikely to be any significant injustice.
3. I saw no benefit to the complainant from my pressing British Waterways to dredge the river until he was ready to use it regularly (especially as I understood that it could silt up again quite quickly). But I could see an injustice to him if British Waterways were not prepared to give a commitment to maintain it to a statutory level once he was ready: without that it would probably not be worth him devoting time and money to any other necessary arrangements for the contract. The development of waterborne freight traffic in that area, which British Waterways had spoken proudly about previously, would be probably then be lost. I therefore sought a reassurance that necessary works would be done when required. However, when I first approached them, they were not ready to give that commitment.
4. Instead they did then commit to dredging to a level suitable for pleasure craft: but that would be of no benefit to the complainant, as he required a greater depth. At the same time they made what appeared to be a clear statement that they would be approaching the Waterways Minister to ask him to consider removing the commercial classification from that part of the river (which would mean that it did not have to be maintained at the same depth). However when I asked for a timetable for that process, they made a further change of tack and referred to 'confusion' about the question of a Ministerial order and said there was no timetable.

5. I could appreciate that freight traffic did not generate very significant amounts of income for British Waterways and that maintaining waterways in a suitable condition for freight vessels could be quite costly for them. However not only were there very much wider issues involved than British Waterways' own finances, but they did have a statutory obligation to maintain the main channel of the river: without the intervention of the Minister that obligation was paramount. I would not condone failure to comply with a statutory obligation, or in this case failure to commit themselves to complying with a statutory obligation, which was causing an injustice to the complainant. Whilst that obligation existed, I regarded British Waterways' failure to give the complainant a suitable commitment to maintain the channel to the appropriate standard as maladministration causing him an injustice.
6. In a draft report, I **recommended** that British Waterways gave the complainant the commitment that when he needed to use it for regular freight traffic, they would maintain the relevant part of the river Severn in a suitable condition for use by freight vessels.
7. I was very pleased that, on seeing the draft report, British Waterways reviewed their position at the highest level, and said they would now give the commitment I sought. They added the proviso that they maintained the right to seek action by the Minister: I had never suggested that they did not have such a right.

#### **Case No 185 - arrangements for alternative mooring**

1. The complainant replaced the boat he moored in a canal basin with one of a significantly different design and size. Not long afterwards, while works were being carried out there, he left his mooring for a period. When he returned he was offered a new mooring which he considered unsuitable. He attempted to move to another British Waterways mooring site temporarily whilst the issue was resolved but was told that he could not remain there. He complained that British Waterways failed to make reasonable efforts to offer a suitable alternative mooring for his new boat.
2. The complainant told me that he willingly left his previous mooring during the works because he planned to be away on holiday in any event. There was a significant dispute, which I could see no real hope of resolving, about some crucial matters relating to the situation after he returned. Those included whether or not he had been told which new mooring he was likely to be offered before he left, arrangements for informing staff of his return date, and exactly how difficult or dangerous it was to manoeuvre his new boat into the mooring offered.
3. Whilst in such a situation I would expect British Waterways to try to find a suitable alternative mooring for a customer with a new boat, their responsibilities are not unlimited. There were particular problems due to the works, which moorers had been warned about in advance. British Waterways did offer a new mooring at the end of the pontoon (an obvious potential solution here) when the complainant became unhappy with his original mooring following his change of boat. The complainant told me that, when rejecting that mooring, he mentioned two other possibilities to British Waterways: one involved moving another customer (who would have resisted a change) and the second involved asking two other moorers to move. I could not see that I should regard it as maladministration if British Waterways were not prepared to take those options, disrupting other customers, especially when they did offer to continue to seek a solution acceptable to the complainant. His boat did eventually use the mooring he rejected, apparently without mishap, for several weeks. All in all, whilst I could not make any finding in respect of some aspects of the complaint, on the aspects I did consider, I did not



see evidence of significant maladministration causing injustice to the complainant.

### **Case No 188 - handling of issues (including an insurance claim) following an accident on British Waterways' property**

1. The complainant was injured in a fall sustained whilst walking on British Waterways' property. He complained that they failed to handle properly his concerns and a later insurance claim following the accident. I could not determine whether or not British Waterways (or their insurers) were legally liable to pay him compensation in respect of his injuries, and advised him it was open to him to take legal action. A number of his concerns were actually about the actions of liability adjusters employed by British Waterways' insurers. I could not consider directly the actions of the insurers or their agents, only how British Waterways dealt with matters and I could not see that I would expect them to have done more than they had done. I did not uphold the complaint.

### **Case No 194 - management of moorings**

1. Mr P moored his boat in moorings run by British Waterways. A serious fire in a boat in another section of the moorings (which Mr P believed was started by vandals) increased his concerns about anti-social behaviour there and hence the need for improved security measures. He complained that British Waterways had not taken adequate account of his concerns about security and access issues and that, when he complained, part of their response was wrongly to seek to enforce mooring conditions far more stringently than was necessary or had been done previously.
2. Whilst I can expect British Waterways to maintain properly any facilities provided, I cannot generally insist that they install additional facilities, such as the locked/electric gate Mr P felt was required. I do however expect them to take reasonable account of issues raised by moorers. I therefore focussed my attention on how his concerns were dealt with.
3. Mr P had expressed concern about security issues at the site and received a helpful response, but that was followed only a few days later by another letter notifying him of a tightening up of controls within the moorings: he saw the two as being connected. He was no longer allowed to park his car close to his boat: which made his concerns about security even greater. I could see why the timing made him suspicious, but British Waterways were entitled to enforce the site rules. I had not seen anything to suggest that moorers had been led to believe that parking was allowed anywhere other than in the official car park.
4. I was concerned that a key promise made in the first letter, of locking an existing gate, was never implemented and Mr P seemed to have had no explanation for this until he complained several months later. A Director then picked up the issue and said, quite rightly, that local staff should have investigated matters fully before making the commitment to lock the gate and that communication about this had been 'incomplete'. He said local managers would be asked to apologise: but they only did so over four months later - after I asked for a copy of the promised apology letter.
5. Whilst Mr P and British Waterways disagreed about parking and the gates, other than some concerns the Director had already addressed, I did not see any maladministration in the way these were considered. However there was additional maladministration in the failure to send out the apology letter the Director had promised. This was not the first time I had had to express concern to British Waterways about a failure to implement actions promised in the

course of their complaints procedure, and I had been told previously that systems would be improved. I was additionally concerned in that the fault was not properly admitted to Mr P when the letter was finally sent to him. I said that if British Waterways wished their customers to trust them, they needed to make sure actions promised during the complaints procedure were carried out, and to be more frank with them than they were when they told Mr P why there was a delay in the apology letter. I upheld the complaint to the extent identified in this paragraph. I **recommended** that within two months British Waterways inform me (and Mr P) of what specific actions they had taken to ensure that actions promised during their complaints procedure were implemented.

### **Case No 195 - unfulfilled promise regarding a mooring**

1. Mr and Mrs Q wished to moor on a disconnected section of canal in Wales. They were offered a towpath mooring until works were complete on planned offside moorings. They paid to have their boat craned into the canal and moored it along the towpath as agreed. However after nearly two years Mr and Mrs Q arranged to have their boat lifted out again because the offside moorings had not been created. They were particularly concerned about lack of security on the towpath side and arrangements for access. They requested a refund of the cost of crane hire and half their mooring fees for the period. British Waterways agreed to a significant reduction in the mooring fees and an additional payment as a gesture of goodwill but they declined to pay towards crane hire. Mr and Mrs Q complained to me about that.
2. I found that before they put their boat into the canal Mr and Mrs Q had been told that the mooring site would be reviewed in two years time, because of the environmentally sensitive nature of the canal concerned. So they were never guaranteed a mooring for more than two years, and they had had the benefit of the mooring for nearly that length of time before they chose to leave. The compensation they had already been offered seemed to me to be a reasonable sum for British Waterways to pay in respect of the fact that Mr and Mrs Q did not have the ease of access and level of security they had hoped for. I did not uphold the complaint.

### **Case No 202 - grass cutting on mooring site**

1. I discontinued an investigation into a complaint that grass cutting at a mooring site had not been carried out strictly in accordance with the vegetation management contract, both regarding frequency and collection of clippings. I found that the contract no longer required grass clippings to be collected. Although the complainant also disputed that the grass had been cut as often as British Waterways said, my attempts to obtain more detailed evidence from either the contractors or the complainant were unsuccessful and I could not see that any worthwhile outcome would be gained from trying to take the matter further.

### **Case No 203 - arrangements for sale of house**

1. Mr R was the tenant of a house owned by British Waterways, who decided to sell it. They planned to do so by auction, but first gave Mr R a short period in which to confirm in writing whether he had an interest in purchasing the house prior to auction. Mr R did not write to express interest in purchasing the house before the deadline given by British Waterways. A solicitor wrote on his behalf over a month after the deadline - by which time the auction had been arranged. It went ahead and the house was purchased by someone else, with Mr R as a sitting tenant. Mr R complained about various matters connected with the sale.
2. After he complained to them British Waterways accepted that, although they were within their rights to sell the property, they had caused Mr R unnecessary distress and inconvenience in

the process. They apologised and made him an ex gratia payment as a measure of their regret. Mr R remained dissatisfied. I concluded that I would not be likely to ask British Waterways to do significantly more than they had done already if I was to investigate matters and that therefore a detailed investigation was not justified.

### **Case No 210 - plans for redevelopment of mooring site and legal bill**

1. This complaint related to the way issues over possible redevelopment of a site where the complainant moored were handled, and his request that British Waterways should pay the legal costs he incurred when disputing the plans. I could not see that any injustice ensued to the complainant from the plans since, in the end, they did not go ahead as originally proposed. The complainant believed that he had legal rights over part of the site which meant that British Waterways were not entitled to act as they proposed. Only the Courts could have determined whether he was correct. It was not clear to me that British Waterways had been acting wrongly in making the proposals they had, and so I could not see any grounds for me to require them to pay the complainant's costs. I did not uphold the complaint.

### **Case No 219 - mooring fees at BWML marina**

1. Mr S complained that BWML did not go about setting the mooring fee for his mooring for 2007-08 properly and in particular they failed to follow their agreed pricing procedure and did not assess market demand in a reasonable way.
2. I compared the process used in Mr S's case with the rather general account of the procedures adopted by BWML. Whilst the arrangements for assessing demand did not seem very systematic, after detailed consideration of a number of points raised by Mr S I did not find evidence to indicate that that, or any failing in procedure, had led to a significantly higher price being charged than might have been charged in any event. I therefore did not uphold the complaint.

### **Cases No 223, 261 and 267 - mooring fees at British Waterways' moorings**

1. Three couples complained separately to me about the way mooring fees were set at the same mooring site for 2007-08. They said in particular that British Waterways had failed to address the inadequate supply of moorings, unfairly used unmet demand to increase prices, and taken inappropriate factors into account when setting the price for the moorings.
2. British Waterways' system of assessing the market rate involved comparing prices at their own and private sites, as well as the current demand for each of their own sites (as assessed by taking the waiting list as a percentage of the number of moorings at the site). The different comparison sheets used at different times to describe and compare sites was confusing, and delay by British Waterways in providing clarification led to a considerable delay in my progress in considering the complaints.
3. I could appreciate why the complainants argued that high levels of demand should not be used as a pricing factor, when this could be reduced if British Waterways provided or facilitated more moorings. However the high demand seemed to be at least in part a result of increased number of boats wishing to use the waterways, rather than losses in mooring spaces. British Waterways were also encouraging more private marina development (though alongside that they had a policy of reducing on-line moorings). Overall I could not see any basis for me to criticise their decision to use the demand factor in the assessment of appropriate mooring prices.

4. Some of the complainants also argued that it was unfair for British Waterways to take into account the availability of other facilities in the area which British Waterways did not themselves provide. I could see that useful amenities in the area, which are not managed by British Waterways, might make a site more attractive and thus increase the market rate. In the same way the value of a house might be affected by being in the catchment area of a good school, the market rate for a mooring is likely to be affected by access to other facilities such as a chandlery, public house or restaurant. So I saw no fundamental problem with those being taken into account.
5. Whilst the system of price setting did take the level of facilities and the environment into account, it did not attempt to do so in the detailed way the previous mooring matrix did. Under the system in use, slight variations in facilities or standard of services were likely to have little, if any, impact on prices, particularly in comparison to other factors such as the demand for the site and other facilities nearby. The services provided at the mooring seemed to be reasonably accurately listed on the definitive table. I also noted that a privately owned local marina, providing the best comparison in the independent sector, was apparently charging significantly more than the price of the moorings in 2006-07. In sum, looking at all the issues raised by the complainants, I did not see anything to suggest that (as a result of maladministration or unfairness) the price set was significantly higher than it should have been. I did not uphold the complaints.

#### **Cases No 225, 252 and 254 - mooring fees at British Waterways' moorings**

1. Three couples moored boats at the same mooring site and each complained to me separately about the way mooring fees were set for 2007-08, especially in relation to the facilities provided. One of their concerns was that the price increase was above inflation. When British Waterways have a policy of setting prices at the market rate, where there is a shortage of moorings then price increases may well be significantly above inflation. So I could not see that the comparison with the inflation rate provided evidence of maladministration or unfairness. All three complainants also had very similar concerns about the level of services and maintenance being provided at the site compared with that previously and about various types of anti-social behaviour. However the services provided seemed to be reasonably accurately listed, albeit without any great detail about the standard, on the comparison table used in setting prices. Again the number of different comparison sheets used at different times to describe and compare sites was confusing, and delay by British Waterways in providing clarification led to a considerable delay in my progress in considering the complaints.
2. The comparison table suggested that in practice one of the most significant factors in determining the price was the demand factor. That seemed to have led the Director (who considered their complaint under British Waterways' complaints procedure) to conclude that the mooring had essentially been rather overpriced and he had decided that the price should increase by 10% rather than the 20% originally intended. The price (and price rise) for the complainants after the adjustment made by the Director was the lowest of any of the comparators (including the two raised by the complainants) except one for which we only had a 2006-07 figure. Altogether I did not see anything to suggest that 10% rise (after the adjustment made by the Director) for the complainants' moorings for 2007-08 was unreasonably high as a result of maladministration or unfairness.
3. However, if a demand factor based on waiting lists was to be used in assessing price rises in future, I strongly encouraged British Waterways to further clarify the position on waiting lists

at the moorings to ensure that only moorers waiting for the particular group of moorings (with or without electricity) were counted in the relevant waiting list. Although this investigation covered the price for the moorings, rather than details of the maintenance and services provided at the site, it showed that the moorers had significant concerns about that. It echoed comments I had already made in my annual report for 2006-07, about the need for greater clarity for many moorers about what service standards they could expect.

### **Case No 226 - mooring fees at British Waterways' moorings**

1. The complainant in this case did not wish me to continue to a formal decision on her complaint, if it seemed unlikely that I would uphold her complaint and recommend a reduction in her mooring fees. With her agreement I therefore discontinued her complaint when I reached that point.
2. The complainant had questioned whether the waiting list (used to assess demand, and hence the price at the site) was so high as British Waterways suggested, but on request they provided me with a copy - which confirmed their account. I could not really expect some of the issues raised about the site to have had a significant effect on the price. Altogether I did not feel it likely that some failing in the procedures led to the complainant being asked to pay a significantly higher price than she should have done.

### **Case No 228 - access to tunnel and security of boat**

1. In 2006 Mr and Mrs T's boat arrived at the entrance to a tunnel, but they were told by British Waterways' staff it had closed for the night. They moored their boat and went to buy food. When they returned their boat had been seriously vandalised and items had been stolen. They complained that British Waterways wrongly did not allow them to pass through the tunnel and then failed to warn them of the level of potential risk to their boat if they moored near the tunnel entrance.
2. I could not see that British Waterways were at fault in not allowing Mr and Mrs T through the tunnel. They arrived after the published last arrival time for a guaranteed passage. Where tunnel times are published, it is up to boaters to make sure they arrive within those times, or to be prepared to wait until the tunnel reopens.
3. Nor did I think that British Waterways were obliged to provide special security measures such as the secure moorings the complainants had found elsewhere. Clearly they may be very helpful, but I was not aware of any requirement on British Waterways to make such provision. However if there was a known history of incidents of theft or vandalism at a particular site I would have expected British Waterways at least to make some effort to warn boaters. It seems that there had been some drug related problems several years before, but that that particular problem had dissipated. It seems that young people did sometimes still congregate nearby, but that does not mean they would necessarily commit the sort of offences committed in this case. I could not find any evidence that British Waterways knew of any of incidents similar to that which affected Mr and Mrs T within the previous 18 months, and probably some considerable time longer. I could not therefore see that I could criticise them for not putting in place any measures or warnings.
4. There was an unresolved conflict between Mr and Mrs T and the tunnel keeper about exactly what he said to them. I had hoped that speaking to both parties might enable me to resolve that, but unfortunately that was not the case. I could not see that the known risks of mooring



in this area were so much greater than moorers might expect in any event, that British Waterways were guilty of maladministration if their staff did not issue any particular warning to people enquiring about mooring there. I could not therefore see that there were grounds for me to uphold this complaint. I also thought it important to recognise that in essence the problem was caused not by any advice given to Mr and Mrs T, or as a result of their decision to leave their boat: but by the thieves and vandals involved.

### **Case No 237 - sale of land adjacent to the complainants' home**

1. British Waterways owned an irregularly shaped strip of land between the end of the gardens of the houses in the road where the complainants live and the offside of a disused canal. The land is in the green belt and had been left more or less wild. In 2006 British Waterways sold part of that land to the rear of three houses to the owner of one of those houses. The complainants live in one of the other two houses. British Waterways kept a very narrow strip of land adjacent to the canal. The complaint was that British Waterways did not follow proper procedures or give proper consideration to the complainants' situation before selling the land.
2. So far as I could tell all the formal procedures adopted by British Waterways were followed and they were quite entitled to sell the land if they wished. The complainants felt that they should have been given the first chance to buy the land but British Waterways were under no more legal obligation to offer the land to them first, than they would be to give their neighbour the first opportunity to put in a bid for their home if they wished to sell that. So initially it seemed that proper procedures were followed.
3. However a number of matters cast doubt on whether the sale was in fact properly considered and proper processes were used. First the sale was not completed until about 10 months after it was formally authorised. By the time of the sale the General Manager who had authorised it was no longer in post and the new Manager said they would not have authorised the sale had they known about it. I was surprised that, when a sale was delayed for so long, there was no arrangement for the authorisation to be reviewed before exchange of contracts. Without that there has to be a real possibility that circumstances may have changed during the period and good administrative practice would make some provision for a final check.
4. Next there was the question of the use of the land. As always, it was essentially the responsibility of the purchaser to make sure that they had adequate planning permission for any use they intended for the land. However I was surprised that British Waterways' surveyor had apparently not recognised that the land was in the Green Belt and that its use as a garden within the curtilage of the purchaser's home might therefore not be considered appropriate by the planning authority. Whilst most people might not realise that planning consent might be required for such a change of use, I would have thought that a surveyor working for British Waterways might realise that and mention it to the purchaser, especially as it seemed likely to have been apparent the purchaser was intending to use the land in that way and might be unaware of the planning situation.
5. Then there was the issue of the possible restoration of the canal. In 2004 the sale of land was not considered likely to affect restoration proposals, but by January 2007 the Manager was saying that no more land would be sold as a restoration scheme might require its use. It seemed that various different accounts given by British Waterways, about the implications of the restoration for the need to keep the land, reflected differing views of different staff about the best thing to do (and were influenced by the concerns raised by residents) - rather than

any change in the restoration plans as some correspondence had suggested. It would have been helpful if there had been one clear corporate view.

6. Finally there was the question of common sense and neighbourliness. Although British Waterways had no legal obligation to offer the land first to the complainants, I would expect them to behave like a good neighbour, subject to their obligations regarding the management of their land. British Waterways would need to be sure that they were maximising the benefit to them from any land sold and might feel obliged to offer plots on the open market. But it struck me that (because of the nature of this site) if the land was to be sold to owners along the street other than on the open market, any sensible good neighbour would realise that the only fair way would be to give the occupant of the most adjacent house the opportunity to express an interest in buying it before it was sold to anyone else. The current Manager acknowledged that it would have been 'prudent' for the complainants to have been contacted at that point. Not to do that was almost inevitably going to create a significant risk that they would feel badly treated.
7. To the credit of British Waterways, whilst their written comments did not give quite as explicit an acknowledgment of fault as I might have expected, they had expressed regret over the matter. Furthermore, the Director who considered the complaint also made significant efforts to try to resolve it. On balance I decided that there was some maladministration and unfairness in the way British Waterways went about selling the land which had not yet been fully remedied. Whilst I could not be sure which what would have happened if things had been done properly, I felt that the most likely outcome would have been that the land would not have been sold at all.
8. The complainants had had no formal right to use the land which they could properly claim to have lost. The outlook from their house had changed, but in the longer term (especially in the light of a planning decision that their neighbours could not take the land within the curtilage of their home) I could not see that this was likely to be enormously different from the view had British Waterways retained the land. Furthermore there was no guarantee that British Waterways would have continued to deal with the land in the same way had it not been sold, especially if restoration went ahead. However I did recognise that in the shorter term the view had been less pleasant and that the whole issue had been unnecessarily stressful for the complainants. No financial compensation could properly remedy that, but payment of a small sum by British Waterways as a token of their regret would be appropriate. I **recommended** that British Waterways should write to the neighbour with a further offer to repurchase the land from them, and seek to agree reasonable terms for that: and that they should pay the complainants a sum of money in compensation, increased if it was not possible to repurchase the land; and that British Waterways should consider whether their procedures for selling land required any revision to reduce the risk of similar problems arising again.

### Case No 240 - repair of road

1. Access to the complainant's home is along a road which British Waterways are responsible for maintaining. The complainant felt that major resurfacing work was required, whereas British Waterways only patched it. I did not feel I could insist on major resurfacing if the patching work had left the road in a reasonable state. I offered the complainant the opportunity to present photographic evidence of the current state of the road and the repairs done, but he did not take that up. I therefore did not take matters further.

## Case No 243 - action on complaints about water leaking from a canal into the complainant's home

1. The complainant owns a house, which he bought from British Waterways, adjacent to a lock. He complained that British Waterways had not dealt properly with his concerns about a leak from the canal into the cellar of his home.
2. Twice (in March 2006 and again in March 2007) they promised to look into the concerns he had raised about the leakage from the lock, and twice they seemed to have failed to keep to that commitment. Reminder letters seemed to have been ignored, and when the complainant tried to use the complaints procedure, he was told that was inappropriate because the matters were of a legal nature. Although some other issues he had raised were of that sort, the failure to follow up on the previous commitment or reply to correspondence, certainly was not. Even if the complainant did threaten legal action in some correspondence on other matters, no such threats were made in the letters I saw on this particular issue: to the contrary he expressed reluctance to me to take legal action. When, not unreasonably, he questioned why a complaint about non-communication and inaction was seen as a legal matter again he seems to have had no response. There was a whole series of failures in the handling of this matter, which did no credit to British Waterways. Several opportunities to put matters right much earlier were missed, when letters were ignored. There were significant and repeated failings in the handling of this matter.
3. I was pleased that, following my intervention, British Waterways finally recognised that they had not handled matters properly. It was particularly ironic when eventually British Waterways said to me that they had been incorrect to promise to review the situation in the first place. They pointed out various terms in documents transferring ownership of the house from British Waterways to the complainant (including that British Waterways had the right for the canal to seep through the property), and said that they did not believe that repair was required. I had already told the complainant that, whilst I would consider how the matter was handled, I would have to refer him to the legal route if we reached a dispute about British Waterways' legal responsibilities in that regard.
4. After I was involved British Waterways accepted that they were at fault and offered apologies. However I was not convinced that that was sufficient to remedy matters. Had things been done properly British Waterways would have given the complainant a considered view on their legal responsibilities back in March 2006. He would not have been led to hope for nearly 18 months that they might take further action voluntarily and would have been spared considerable time, trouble and frustration pursuing this matter. I thought that, as well as the apology, he was due some compensation in respect of that. I **recommended** that British Waterways pay the complainant £100 in respect of the unnecessary time and trouble he had to take as a result of the way they handled his concern.

## Case No 244 – lack of dredging at 'end of garden' mooring

1. The complainants moored a boat on the canal at the end of their garden, and paid British Waterways for a mooring permit. However the mooring silted up, preventing them from using their boat. British Waterways refused to dredge the mooring unless the complainants paid for the work. The complaint was that British Waterways had not dealt properly with the issue of dredging at the mooring.



2. British Waterways were quite correct in saying that their general responsibilities for maintaining canals did not mean they were obliged to dredge under the mooring. However that left the question of the mooring permit. I was very surprised to find that individuals paying for permits to moor adjacent to land not owned by British Waterways (often known as 'end of garden' moorings) were not provided with any document to indicate what terms and conditions were attached to that and in particular where responsibilities for maintaining the mooring site lay. I could understand why those paying for a mooring permit might reasonably expect, as the complainants did, that British Waterways would keep the relevant part of the canal in a suitable state for mooring. That is not to say that I think British Waterways are obliged to provide any necessary dredging at end of garden moorings. I know of no reason why, generally, they have to do so. In effect moorers are being charged for the right to exclusive use of part of the canal under their boat, alongside their garden. It seemed to me that it was up to British Waterways to decide whether to offer mooring permits which covered the cost of any necessary dredging at the mooring or ones which do not. The former might be more expensive than the latter, given the cost of dredging. I am not sure which moorers would prefer: I suspect views might vary.
3. However it seemed to me that, since moorers were being asked to pay a substantial sum of money for a mooring permit, it was wrong for them not to be told more clearly what they would get for their money. This was especially so here where moorers might reasonably expect that they were purchasing a higher level of service than was actually the case, and where they may need to incur the very significant additional cost of dredging in order to move their boat. Some moorers, were they aware that dredging was not included in the cost of such a mooring permit, might decide that the potential total cost was too high and make arrangements to moor elsewhere (eg in a marina or other formal mooring) or to give up their boat.
4. Following my intervention, British Waterways recognised that written terms and conditions for end of garden moorings should be provided for moorers. However I considered the previous lack of any explanation for prospective moorers about maintenance of the mooring site was maladministration which caused injustice to the complainants, as they might not have chosen to pay for a permit had they realised it would not include a commitment to carry out any necessary dredging.
5. I could not really expect the complainants to be able to tell me (without the benefit of hindsight) what they would have done had they been told, when their mooring permit was last due to be renewed, that it would not cover the cost of any dredging. They needed the opportunity to make a considered decision about whether to continue using the mooring (and probably funding necessary dredging themselves), whether to find another mooring elsewhere where any necessary dredging would be included in the fee (eg in a marina or online mooring site), or to give up their boat. It might take a while to weigh up the costs and benefits of each. In the interim they said they had not been able to use their boat since April 2007. However they had still had the benefit of having somewhere to keep it, so I could not see that they were entitled to recover the whole mooring fee. I **recommended** that British Waterways should offer the complainants the opportunity to keep the boat at the mooring for a further three months from the date of the report. For the period from April 2007 until either the three month period expired, or they moved the boat to another mooring, or the mooring was dredged by British Waterways (should that occur for some reason I could not foresee) they should be required to pay only half the usual mooring fee and any necessary refund should be

made. The opportunity to take up a new mooring permit at the end of the three month period should be offered - at the full rate with clear terms and conditions. I also **recommended** that in future British Waterways make clear to people seeking an end of garden mooring permit what the terms of that are, and in particular what the arrangements are for any dredging necessary to facilitate use of the mooring.

### **Case No 245 - request for compensation in connection with major works being carried out in the area of a residential boat**

1. British Waterways were carrying out major works in the area of the complainants' residential mooring. Initially they indicated that all moorers would need to move their boats during the works, and that they would be provided with an alternative mooring (the original moorings were not managed by British Waterways). The complainants were not content with possible alternative sites they visited and as a result, British Waterways then agreed that they could remain in the area but might need to move their boat within the moorings. The complaint was that British Waterways had not given proper consideration to a request for compensation for the effects upon the complainants of, or the amount of their time taken in dealing with issues arising from, the works being carried out. The complainants believed that they were entitled to compensation under a notice served under Section 5 of the British Waterways Act 1995 regarding entry onto land, also because of the effect on them of the changes at the moorings, and to cover the cost of travel and their time visiting alternative mooring sites.
2. I could not see that the legal provision in relation to the notice of entry onto land applied to the complainants; but I advised them of their right to pursue matters with the Lands Tribunal if they disagreed. There is generally no legal right to compensation if a properly authorised development (or increased use) means that one's home (whether on land or in a boat) becomes more overlooked, its view changes or if there is increased traffic or noise in the area. It seemed to me that, at the very most, if their boat had a houseboat certificate, the complainants might have some legal entitlement to payment of costs and expenses necessarily incurred in moving the boat, and that even if they did not have a strict legal entitlement it might be good practice for British Waterways to make such a payment in their situation. However I could not see that they had any basis for claiming statutory compensation for general inconvenience, time spent at meetings and writing letters etc or for changes to the environment around the boat. British Waterways had already offered them a sum to compensate for the costs they incurred in visiting potential alternative mooring sites. I invited the complainants to provide detailed information to support their claim for additional compensation, but the only such information they provided did not indicate that they had incurred as much actual total loss or expense as they had already been offered by British Waterways. In effect they had already been offered a small additional sum of the sort I might have recommended. I could not therefore see that I had any grounds to uphold their complaint.

### **Case No 248 - guidance on setting mooring prices**

1. Mr V complained to British Waterways about the way the price of his mooring was set for 2007-08. The Director who considered the complaint at stage 2 of the procedure decided that the price should be reduced. The complainant said he was 'very satisfied' with how his complaint was handled and the outcome, but remained concerned about the system used for assessing prices - particularly how the arrangements for assessing demand factor affected small mooring sites and whether decisions were being based on sufficient data. I approached the Director who agreed to ensure that Mr V's concerns would be taken into account when

any briefing document on setting mooring prices was prepared for 2008-09. Mr V was content with that outcome and for me to regard the complaint as having been **resolved**.

### **Case No 249 - refusal to sell land to the complainant**

1. Mr W lived on the same road as the complainants in case no 237 (above). He complained that British Waterways refused to sell him the land at the end of his garden, when they had sold land at the end of a neighbour's garden to that neighbour and when one of British Waterways' staff had told him that the previous sale set a precedent.
2. I explained that the fact that British Waterways had sold land to a neighbour in a similar situation did not mean they had to sell land to him. Anyone who had said that to him was mistaken. Following the complaints that the previous sale provoked, British Waterways had said that at present they would not sell the land at the end of their gardens to any more residents, but they had offered to rent it to them. They had made that offer to Mr W. I could not see that British Waterways had done anything wrong in refusing to sell the land. I did not uphold the complaint.

### **Case No 251 - refusal to replace fixed bridge with swing bridge**

1. The complainant lives near a bridge over a canal. He believes strongly that British Waterways should replace the current higher fixed bridge with a low level swing bridge thus removing the need for steps or a very long ramp. It was clear from correspondence provided that British Waterways had considered the arguments the complainant put forward, but for other reasons had decided not to replace the bridge. I did not see evidence in that, or in what the complainant or his MP told me, of a failing by British Waterways which would enable me to take matters any further. I told the complainant that if he wished to raise issues of Disability Discrimination then he would need to use the particular procedures for that under the Disability Discrimination Acts and it would not be appropriate for me to attempt to pursue that aspect of the matter in this case. I did not uphold the complaint.

### **Case No 252 - see Case No 225**

### **Case No 254 - see Case No 225**

### **Case No 259 - handling of issues relating to fishing rights and land ownership**

1. A company bought some land with a frontage on a waterway. They believe that thereby they acquired fishing rights along that part of the waterway. However for some time prior to that British Waterways had assumed they owned those rights and had let them to an angling club. From 2005 to 2007 the company and British Waterways (or their agents) were in correspondence on the matter but that was inconclusive. The company complained that British Waterways had failed to deal properly with disputed issues relating to their fishing rights and ownership of land.
2. I explained that it would not be appropriate in this case for me to attempt to give a judgment on the legal rights of either party in the way which a Court could do. I therefore considered only whether there was maladministration in how matters were handled. It seemed that for some time British Waterways or their agents did not try properly to ascertain whether or not they were indeed entitled to the fishing rights. Although the agents and British Waterways' own staff would have some expertise in such matters and every potential legal issue does not require formal legal advice, I was surprised to find that British Waterways had not taken legal

advice until after my involvement: about two years after the company first claimed the fishing rights and asked British Waterways for evidence to back their opposing claim. I note that the agent queried whether he should involve British Waterways' lawyers back in 2005, and in March 2006 positively suggested that specialist advice should be taken, but this still did not seem to have happened.

3. Whilst it would be entirely proper for British Waterways to defend any rights they believe they have, I expected that, when the existence of those rights was called into question, they would make reasonable efforts to double check on the legal position. Rather than being open minded and taking advice as to whether they did indeed have the rights, British Waterways seemed largely to have followed a line of seeking a compromise solution and applying pressure by suggesting that a Counsel's opinion would be needed. They had also thrown into the debate suggestions first that they owned a sliver of land between the towpath and the canal and then later that they actually held the freehold of the towpath. Whilst I was not in a position to say whether or not either of those assertions was correct, British Waterways never seemed to have put forward any evidence to back them up - as I might have expected them to do if such assertions were to be made regarding land registered as in the company's ownership.
4. All this led to an unnecessarily protracted correspondence. I could understand why the company became very frustrated. Matters were made even worse when they received no response to their complaint - until I intervened. Had things been done properly, the situation eventually reached in December 2007 following my intervention, of British Waterways having laid out their legal arguments in support of their view, would have been reached significantly sooner. It seemed to me that the injustice arising was the delay and any additional costs incurred by the company as a result. I **recommended** that British Waterways paid any additional legal costs incurred by the company specifically because of British Waterways' failure to deal with matters properly. I also **recommended** that British Waterways should clarify in writing whether they believed they owned (or had other rights over) any of the land registered to the company, and if so why.

### Case No 261 – see Case No 223

### Case No 263 - mooring fees at British Waterways' mooring

1. The complaint was that British Waterways had not set the price for the complainant's mooring properly for 2007-08. The complainant questioned particularly why prices at his mooring had risen by 12.5% when he understood the average rise had been 5.87%.
2. One of the key factors in setting the percentage increase seemed to have been the demand factor (ie number of people on the waiting list divided by the number of moorings) and demand for the complainant's mooring site seemed to be higher than some other local sites. I did not see anything to suggest that the price for the complainant's mooring was set significantly higher than it should have been as a result of a failure to follow British Waterways' policy or procedures.
3. Although the complainant had obtained the average price rise figure from a source which would generally be reliable, British Waterways provided a press release they issued in November 2006 showing that they were proposing increases of an average of 10.4% nationally. I had seen slightly different figures for the national average on different documents (probably because it can be calculated in different ways) but I had had never seen a figure for the national average of less than 10%. So although the complainant's increase was rather above the national average,

it was certainly not so much above the average as he feared. I did not suggest that a 12% rise led to the correct price – there was no way to calculate that exactly – I simply said that I had not found evidence that it was wrong. I could not therefore uphold the complaint.

### **Case No 267 - see Case No 223**

### **Case No 270 - lack of dredging at 'end of garden' mooring**

1. Although this complaint was made separately, related to a different canal a distance away, and was the subject of a separate report, the issues raised and conclusions reached were very similar to those in case no 244. However in this case the complainant had, with some difficulty, been able to continue using his boat by mooring it alongside a different part of his land away from his wharf. I upheld the complaint on the same grounds and made similar recommendations, but **recommended** a slightly smaller temporary reduction in the mooring fee since he had not had such severe problems in using his boat.

### **Case No 276 - mooring fees at British Waterways' mooring following previous commitment about phasing of increases**

1. In December 2007 British Waterways set a price for the complainant's mooring for 2007-08, based on a phased increase from 2006 plus a 6% increase for 2007. They said that the increase would be reviewed if the site was not fully occupied at April 2007. British Waterways took the view that the moorings were full then but the complainant argued they were not - because one place was taken by a boat with an expired licence and mooring permit. However evidence before me showed that there were five boats on the waiting list for the site at April 2007, so even if the unlicensed boat had been removed by then its place could have been filled immediately and still left a waiting list. It seemed clear to me that the intention had been to increase the price unless there was insufficient demand to fill the site, and that was not the case. Therefore I could not see any basis for me to question the decision that the price rise should go ahead.

### **Case No 277 - compensation for effects on business of development works on British Waterways' land**

1. The owner of a business complained that British Waterways refused to pay compensation when the business's income dropped during nearby development works which took longer than expected and when part of a towpath was closed. I did not conduct a detailed investigation because I could see nothing to suggest that British Waterways were guilty of maladministration or unfairness affecting the complainant.
2. Like any landowner British Waterways were entitled to carry out developments on their land for which they had any necessary planning permission. I could not see that they had any more obligation than any other business to have regard to the effect on neighbouring businesses. I could see it would be frustrating that matters took longer than expected but that was always a risk with a major development. Nor could I see that British Waterways had any duty towards the complainant to provide facilities in the area which would attract customers to the complainant's business. Whilst I would expect British Waterways to act as reasonably good neighbours, I could not expect them to prioritise the complainant's interests above their wish to see their own site redeveloped and to provide services for their own customers. I pointed out that I could not imagine that the complainant would expect to compensate British Waterways if the roles had been reversed.



3. I considered particularly carefully an argument made that obstruction of the towpath might amount to a nuisance. It did not appear that the relevant piece of towpath was a public right of way. So it seemed to me that British Waterways were entitled to close it during the works. I did not uphold the complaint.

### Case No 282 – action on complaints about noise from boats

1. The complainants live in a house very close to a canal where it passes through a town. The towpath runs at the end of their garden. Opposite their house, across the canal, a number of boats moor adjacent to privately owned land. The complaint investigated was that British Waterways had not dealt properly with complaints made about noise from some of the boats, running their engines or generators.
2. The terms both of their licences and their usual mooring permits require boaters not to cause a nuisance to others: and there is a specific requirement in the licence not to run generators or engines in the earshot of other people at night. I would expect British Waterways to make reasonable efforts to deal with allegations that boaters are breaching those terms and to act generally as a good neighbour, though in the end the decision about exactly what action to take is for them not me. I noted the number of visits patrol staff said they had made without finding any evidence of a noise problem. However a series of short random visits was probably not particularly likely to pick up a problem of intermittent spells of noise: particularly if visits only took place during the daytime on weekdays.
3. British Waterways had told the complainants that they would send letters to the boaters about the noise problem. I was very disappointed to find that the promised letters were not sent for five months, and only after I had asked for copies. It was simply not acceptable for British Waterways to promise complainants that they would take actions in respect of their complaints and then not to do so: and this was not the first time something of this sort had happened. I was pleased that they were now to set up a national system to monitor implementation of such commitments. After a prompt from me, British Waterways apologised to the complainants for the failure in their case. I was also concerned that, even when the letters were sent belatedly, they indicated to the moorers that the issues had been fully resolved, when that was not the situation from the complainants' perspective. I considered that there had been maladministration causing injustice to the complainants in the way their concerns were handled. Following my first draft of the report, British Waterways met with the complainants and were planning to meet the owners of the land opposite, to discuss ways of improving the moorings there and reducing the problem of engine noise.
4. I **recommended** that British Waterways continued to liaise with the complainants, the landowners, the moorers (and if necessary the Council's environmental health department), with a view to finding ways of reducing any excess noise from the moorings opposite. In particular I recommended that if the complainants reported further unacceptable levels of noise, then (if the complainants wished) British Waterways should write one more time to the moorers, making it clear that the issue had not been resolved and that they were continuing to monitor the situation and could take action. I also **recommended** that British Waterways should report to me in three months time on the progress being made towards resolving the problem.

### Case No 284 - handling of request for installation of a gate at moorings

1. A waterways group complained about how British Waterways dealt with their request that a gate was installed to deter unauthorised vehicles from entering an area of moorings in Scotland. The gate was installed but removed after someone else affected complained about it. Following local consultations British Waterways decided to install a gate in a different position. The group complained that British Waterways had failed to honour its original commitment about the gate, about how the consultation was carried out and that insufficient attention had been paid to health and safety.
2. British Waterways had agreed to install the gate without anticipating that some others affected by it might object. They did have a valid reason for reviewing that decision. In the subsequent consultation six written responses were for the proposed gate and four against, with a further two people expressing views against the gate: but not in writing. The group argued that only the written responses should have been considered and that those amounted to a vote in favour of the gate. I pointed out that a consultation is not the same as a referendum. It is not a case of counting votes, but of considering carefully all the points made. Clearly it was only fair that either all parties should have been restricted to commenting in writing or none should have. But, having seen details of all the comments, I concluded that the fact that two additional non-written comments were considered would have made no difference to the outcome, as they were very similar to comments already made in writing. So I could not see that there was any injustice arising from the way the consultation was handled.
3. I could not see that the arguments put forward about health and safety should necessarily have outweighed all others put forward. I did not uphold the complaint.

### Case No 286 - failure to pay agreed compensation to cyclist

1. Following a complaint by a cyclist about an accident on a towpath in Scotland, a British Waterways Director agreed that they would take various action to improve safety, and to pay the complainant a sum in compensation. The cyclist complained to me when nearly three months later the compensation payment had not been made. I was able to **resolve** the complaint by contacting the Director, who acted very promptly by apologising and arranging for an increased sum to be paid within a few days.

### Case No 305 - arrangements for managing access to locks and handling of complaint

1. The complainant was seriously delayed on a boat journey in Scotland, when boats which had arrived much later than his were given priority by lock-keepers. He was unable to complete his planned journey that day, and had to stay in a hotel as he was in an open boat. He felt that some aspects of his complaint had not been adequately addressed by British Waterways during their complaints procedure.
2. I was able to **resolve** the complaint to the complainant's satisfaction, by contacting the Director concerned, who provided a further response which answered the relevant points.

## How to contact the Waterways Ombudsman

If you have a complaint about British Waterways you need first to use their own complaints procedure. Information about that is available from their website, [www.britishwaterways.co.uk](http://www.britishwaterways.co.uk), or by calling them on 01923 201120, or by email to [jonathan.bryant@britishwaterways.co.uk](mailto:jonathan.bryant@britishwaterways.co.uk).

If you remain dissatisfied after completing British Waterways' complaints procedure then the Waterways Ombudsman may be able to help. I can be contacted at:

Waterways Ombudsman  
PO Box 35  
York  
Y060 6WW

Telephone: 01347-879075  
Email: [enquiries@waterways-ombudsman.org](mailto:enquiries@waterways-ombudsman.org)

More information about the Waterways Ombudsman Scheme and how to complain can be found on the Scheme's website at [www.waterways-ombudsman.org](http://www.waterways-ombudsman.org).





## NOTES



