

Annual Reports of
The Waterways Ombudsman
Committee
and
The Waterways Ombudsman
for 2011-12



Annual Reports of
The Waterways Ombudsman Committee
and
The Waterways Ombudsman
for 2011-12

Contents	Page
Annual Report of the Waterways Ombudsman Committee	3
Annual Report of the Waterways Ombudsman	7
Annex A Detailed data on enquiries	15
Annex B Summaries of decisions on all eligible cases	17
Annex C How to contact the Waterways Ombudsman	29

ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN COMMITTEE FOR 2011-12

The Committee

1. This is the seventh annual report of the current Committee, covering the period April 2011 to March 2012. Since its formation in 2005 the Committee has overseen the operation of the Waterways Ombudsman Scheme and the independence and accessibility of the Waterways Ombudsman. Because of the abolition of British Waterways in July 2012 this may be the final report of the present Committee: by March 2013 the Canal & River Trust may have made new Ombudsman arrangements for England and Wales. In Scotland complaints are now considered by the Scottish Public Services Ombudsman.

2. The main roles of the Committee have been:

- 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.)

3. The Committee normally has eight members. Of those, three (including the current Chairman) are independent and three were 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 were appointed by British Waterways. The Committee continued to hold temporarily the ongoing vacancy for an independent member. Full details of the membership of the Committee are given at the end of this report.

4. The Committee met twice during the period, in May and September 2011. Approved minutes of Committee meetings are available on the Waterways Ombudsman Scheme's website at www.waterways-ombudsman.org. The Committee's work has necessarily had to cover future plans for complaints handling, as well as routine issues.

The Scheme

Ombudsman's reports

5. The Committee considered reports from the Waterways Ombudsman about the operation of the Scheme. Those covered matters including:

- complaint workload;
- service standards;
- customer satisfaction;
- contacts with stakeholders;
- publicity;
- progress on plans;
- funding of the Scheme.

Customer satisfaction

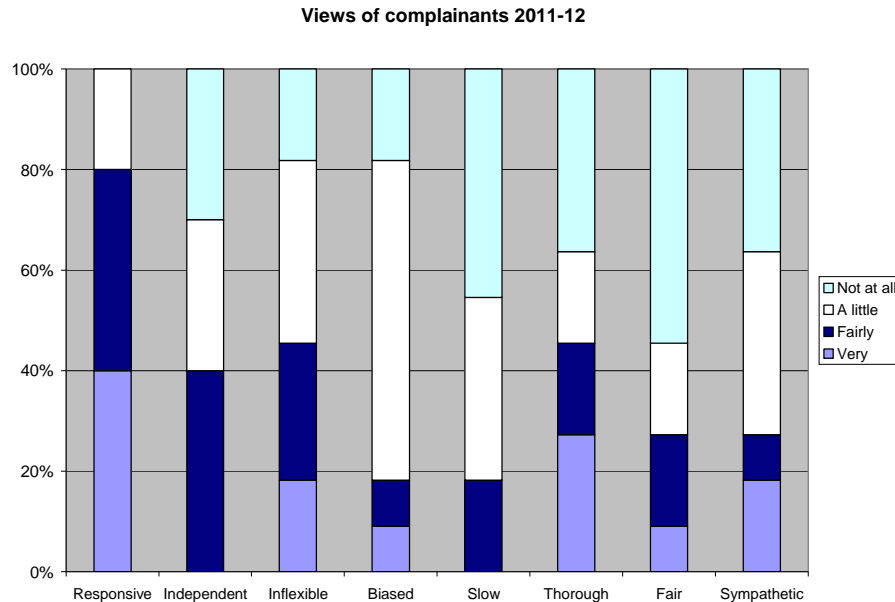
6. A customer satisfaction survey for the Committee has operated since November 2007. Since April 2011 the survey has mainly been carried out over the internet, though paper survey forms have still been sent when no email address was available. This has increased the number of responses though it is still only very small, particularly regarding enquiries, which are often only made by telephone and no contact details are obtained.

Enquirers' views

7. Four responses were received from people who made enquiries. Most felt the service had been prompt, helpful, sympathetic and flexible. One commented that they had a 'superb quality of service not experienced from other Ombudsman services'. However another felt the scheme should work more closely with British Waterways to improve their administration and response.

Views of those whose complaints were investigated

8. Eleven responses were received, though not all respondents answered every question. 64% felt that the Ombudsman had understood their concerns well or very well, but only 45% felt they had been well informed about how their complaint was to be handled and the progress made.



9. The chart above shows that the service scored best on speed and responsiveness. Encouragingly misplaced concern about possible bias has reduced from last year, though sadly fewer people found the service sympathetic. This, the fact that only 45% felt that the decision was very or fairly well explained and that only 18% said they were satisfied overall, may be accounted for by the fact that 72% did not agree with the decision at all. Nevertheless 55% said they would recommend others to contact the service about a complaint.

10. The Committee also considered the wide range of more general comments made by complainants about how the scheme could be improved. Some felt that the Ombudsman had been too sympathetic to British Waterways, but the type of comment most often made was that the Ombudsman's remit and powers should be increased. The Chairman also received two complaints put to him about the scheme and its operation, but those were outside his jurisdiction.

Operation of the Scheme

11. The Committee remained satisfied that the Scheme was meeting its purposes as set out in the Rules.

12. The Committee noted some further problems during the first part of the period with delays in payments by British Waterways for Scheme costs. However new payment arrangements were then made which resolved the previous problems. The Committee remained satisfied that funding made available was sufficient and there had been no interference with the Scheme's efficient and effective operation.

Conclusion

13. The Scheme itself has been running smoothly and a significant part of the effort for the Committee during this period has been dealing with the implications of the plans for changes in management of the waterways. The Committee remains committed to ensuring that the scheme continues to provide a good service, following the transition to management of the waterways in England and Wales by the Canal & River Trust.



Members of the Committee during 2011-12: with background information relevant to that period.

Chairman

Professor Sir Jeffrey Jowell QC is Director of the Bingham Centre for the Rule of Law and Professor Emeritus of Public Law at University College London. He practises at Blackstone Chambers, was a former member of the Royal Commission for Environmental Pollution and Office of Rail Regulation and was the UK Member on the Council of Europe's Commission for Democracy Through Law ("The Venice Commission") from 2000 to 2011.

Other Independent Members

Michael Reddy, formerly Chief Executive of the Office of the Independent Adjudicator for Higher Education and Deputy Banking Ombudsman, Director of Syndicus and MCC Mediators.

Vacancy

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.

Geoff Ashton, boater since 1980. Partner in small moorings and short break/day hire business. Past Deputy Chair of APCO, past Chair of British Hire Cruiser Federation, past member of Visit Britain Tourism Development Committee, past Council Member BMF and formerly National Treasurer of Association of Waterways Cruising Clubs. Currently President of AWCC.

Peter Lea, a Chartered Accountant, was vice-Chairman of the National Association of Boatowners for three years, and then its Chairman for a further three years. During this period he served on numerous committees on waterway matters.

Members appointed by British Waterways

John Bridgeman CBE TD, Vice Chairman of British Waterways, Chairman of Fair Trading Committee, Chairman of Wales Advisory Board, Pension Trustee 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; Independent Regulatory Director of the British Horseracing Authority; Chairman of the Audit and Standards Committees of Warwickshire County Council and Warwickshire Police Authority; Formerly Director General of the Office of Fair Trading and a Member of the Monopolies and Mergers Commission.

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

ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN FOR 2011-12

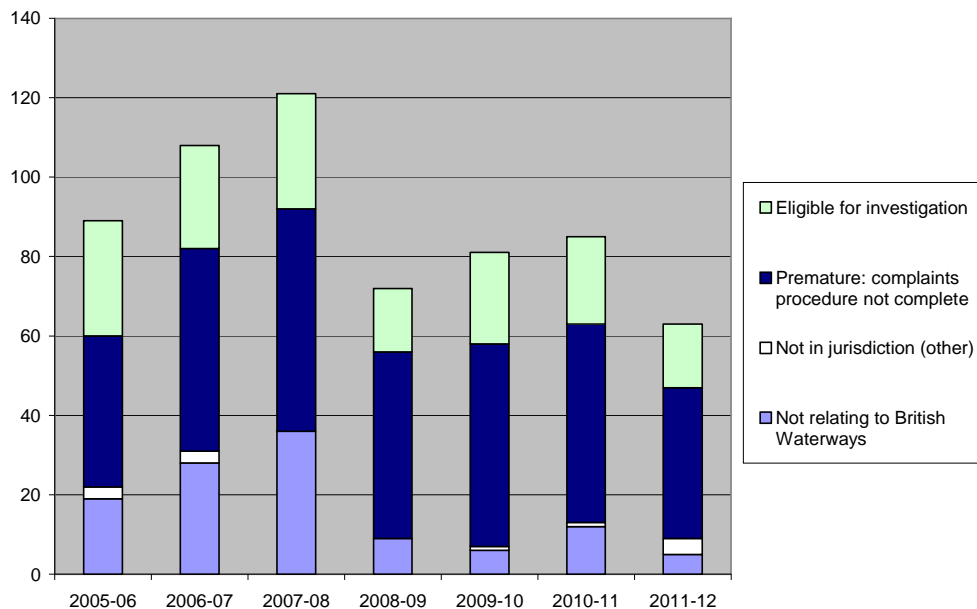
Introduction

1. This is my final annual report as Waterways Ombudsmen. It covers the period from April 2011 to March 2012. It will be my final report as, even after the extension given last year, my term as Ombudsman will end shortly. There has also now been, from July 2012, the very major change of the transfer of responsibilities for waterways from British Waterways to the Canal & River Trust (in England and Wales) and to Scottish Canals.

Casework - workload

2. The workload over this period has been quite similar to that last year, though numbers of new enquiries and complaints have fallen. The annual number of enquiries has fallen from 85 to 63. However in part this is because the number of enquires about issues which do not relate to British Waterways has reduced. When that is discounted, the number of enquiries relating to British Waterways has still fallen a little, but has not changed greatly over the last four years.

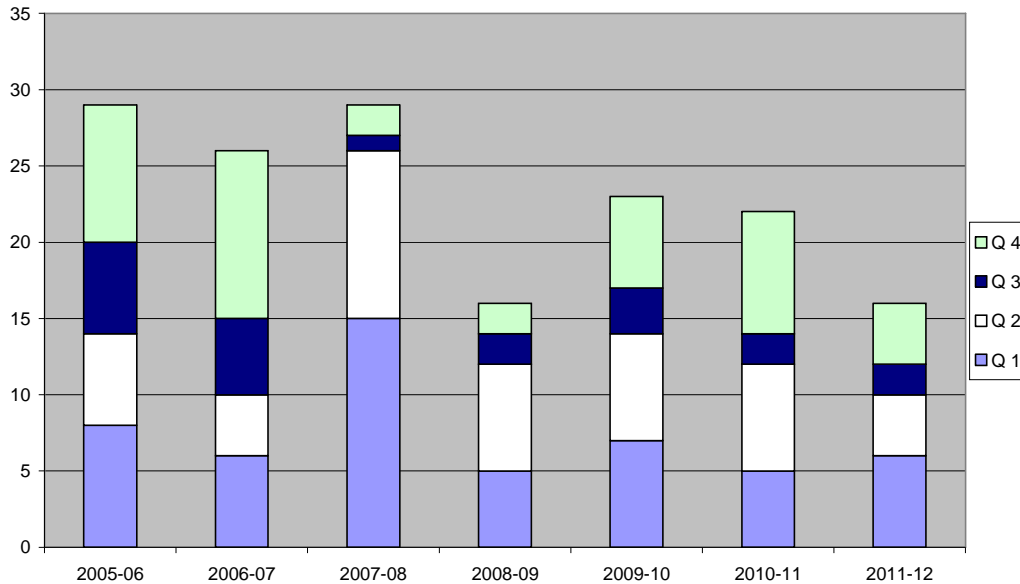
Enquiries work



3. I could only consider complaints put to me which had completed stage 2 of British Waterways' complaints procedure (or where the procedure had failed). 16 of the enquiries in the year were complaints within my jurisdiction which I

was able to accept for consideration: a drop from 22 last year (though one of the 16 did relate to three separate complaints put to British Waterways).

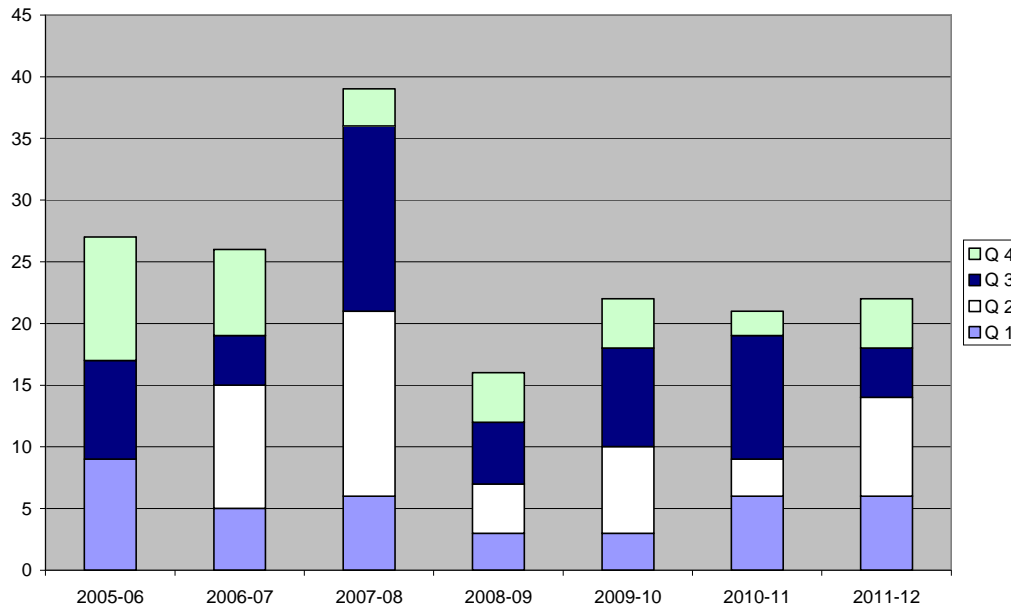
New cases to 2011-12



4. The number of complaints entering the British Waterways' complaints system at stage 1 continued to fall, from a peak of over 1,000 in 2005-06 to 230 last year and only 204 this year. The proportion of those which eventually come to me has also fallen slightly for the first time for a while, from about 9.6% last year to about 7.8% this year, which is pleasing as it means British Waterways were settling more. However it is still quite high: bearing in mind that it was only about 3% in 2005-06.

5. I completed 22 investigations in the year compared to 21 last year and 22 the year before. If I can resolve complaints informally, rather than issuing a more formal report, I generally do as that usually produces the best outcome in the quickest, most efficient way. This year five complaints were resolved wholly or in part as a result of either informal intervention or a formal report. Of the remainder, 13 were not upheld, and in four cases I reached no view for various reasons (eg the complainant did not provide necessary information, or the complaint was a dispute on a point of law or better dealt with by the Information Commissioner). As in previous years, British Waterways agreed to act upon all the recommendations I made in my reports.

Investigations completed quarterly



6. All the completed cases but one took less than six months to reach a decision. The exception was a case which was suspended for a lengthy period, awaiting the outcome of a court case. Excluding that case, the average time to complete cases again improved this year, going down to 77 days from 80 last year.

<i>Time to completion</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>	<i>2011-12</i>
<3 months	12 (31%)	10 (63%)	13 (59%)	15 (71%)	15 (68%)
3-6 months	17 (44%)	4 (25%)	4 (18%)	4 (19%)	6 (27%)
6-9 months	7 (18%)	1 (6%)	2 (9%)	1 (5%)	0
9-12 months	0	0	1 (5%)	1 (5%)	0
>1yr	3 (8%)	1 (6%)	2 (9%)	0	1 (5%)

There was only one ongoing investigation at the end of March 2012, and that was less than a month old.

7. Seventeen of the 22 completed investigations related to boating and, of those, seven related to moorings in some way. The five other complaints included one about angling, and two from local residents about management of British Waterways' property. One investigated complaint related to Scotland, and the rest to England. Two related to British Waterways Marinas Limited (BWML – a wholly owned subsidiary of British Waterways which

operated marinas) and the rest to British Waterways directly. Summaries of all completed investigations can be found in Annex B.

Service standards

8. The service standards for the Ombudsman scheme set by the Committee are as follows:

- acknowledgement or response to initial letter, email or telephone call within a week of contact in 90% of cases;
- decision on whether to investigate within 3 weeks of initial contact in 90% of cases;
- 70% of investigations complete within 6 months of acceptance.

9. All the targets were exceeded during 2011-12

- the first standard has been achieved in 94% of cases;
- the second standard has been achieved in 98% of cases;
- the third standard has been achieved in 95% of completed cases.

Contacts with stakeholders

10. During the year I have:

- attended the National Waterways Festival at Burton on Trent at the invitation of the Inland Waterways Association;
- attended British Waterways' annual meeting in Birmingham.

As always I took the opportunity those events afforded to meet a range of people with waterways interests.

Issues arising from complaints

Complaints handling

11. In many cases I have seen that people expressing concerns to British Waterways were promptly informed of their right to make a complaint and that was then handled properly and reasonably within the internal complaints procedure. However there have still been instances (eg one quoted in the data on enquiries and a couple more recently) where people have approached me saying that they had only just found out about the existence of the Ombudsman (and the internal complaints procedure) after lengthy correspondence with British Waterways on the matter at dispute. Delaying informing complainants about the procedure or my role is only likely to prolong correspondence, which is in the interests of neither the complainant nor British Waterways. I hope that the Canal & River Trust will impress on its staff the need to refer appropriate matters into the complaints procedure promptly.

12. There have also been rather more cases than I would like to see (for example the complaints covered in case 596), where it was only at the second stage of the internal procedure that a more detailed response and more positive approach to resolving matters was apparent. That is also reflected in the fact that still (from figures provided by British Waterways) about 20% of stage 1 complaints move on to stage 2. Again early resolution at stage 1, is clearly in the interests of both parties and it is worth investing effort in resolving matters at that stage.

13. Another issue is illustrated starkly in case 574. That is the importance, when responding under the complaints procedure, to avoid introducing other issues into the complaints correspondence, particularly anything which could feel to the complainant like an attempt to intimidate them. Many complainants feel terribly vulnerable to other action being taken against them as a result of their complaint, especially when they rely on being able to continue using the services of the organisation. If, whilst dealing with the complaint, the organisation has other issues it needs to raise with the complainant (issues which it genuinely would have raised with anyone else who had not complained), that should be done separately from the complaint.

Complaint issues

14. The pattern and subject matter of complaints has been quite similar to that in previous recent years, but with no single major theme emerging. As previously, continuous cruising, mooring management and charges and end of garden moorings have appeared as complaint issues. I have received quite a few enquiries about administration of mooring and licence payments, but those have generally been resolved after being referred into the internal complaints procedure.

15. As always a number of complaints have essentially been disagreements with management decisions, rather than injustices caused by maladministration or unfairness where I could intervene. Ultimately I felt case number 584 fell into that category, though that was only because significant action had already been taken to remedy matters at stage two of the internal complaints procedure. I was concerned to note that an initial decision had been taken about changing the payments for six month boat licences, without apparently thinking things through properly or explaining the real rationale behind the decision. I suspect that had British Waterways been more open about their intentions (moving towards abolishing those shorter term licences), the weaknesses in their initial plan would have been apparent sooner and the need to backtrack might have been avoided. I hope that the new structures in future will encourage a more open interactive approach with users.

Future changes

16. The future Ombudsman arrangements for Scottish waterways were clear for some time before the transfer: complaints about Scottish Canals now go

to the Scottish Public Services Ombudsman rather than to me, which I am sure is a sensible decision.

17. The organisation of new Ombudsman arrangements for England and Wales did not progress so quickly. I had initially been encouraged to hope that a new (possibly slightly different) scheme would be set up by the Canal & River Trust and a new Ombudsman would be in place by the time of the transfer in July 2012. However that did not happen and meant that at the end of 2011-12 (and for a couple of months afterwards) I was unable to tell complainants what would happen to any complaints I was unable to complete when my extended term of office ended at the end of June 2012. I appreciate what an enormous amount British Waterways and the Canal & River Trust achieved in a short time to make the transfer possible, but nevertheless the delay in clarifying complaint arrangements was rather disappointing.

18. Eventually, in June 2012, the Canal & River Trust agreed that, rather than setting up a new Ombudsman scheme straight away, they would adopt British Waterways' scheme (with some minor changes) to begin with. I also agreed to continue as Ombudsman until the end of September 2012, to give more time for a new Ombudsman to be appointed.

Conclusion

19. As I said in the introduction, this will be my final report as Ombudsman, and it therefore seems appropriate to draw together my experience from the seven years I have been in post. Only as I have written this has it become clear to me quite how much has changed since then. Of course there has been the very recent change from British Waterways to Scottish Canals and the Canal & River Trust, inconceivable when I first started and successfully achieved over a remarkably short period in the last couple of years. Changes for the Ombudsman scheme may have been rather less dramatic but have been equally significant.

20. The first big change, in hand when I started but only completed during the following 18 months, was the development of a completely new set of rules for the scheme, which enabled it to achieve full membership of the British and Irish Ombudsman Association (now called the Ombudsman Association). That is in effect an accreditation of the scheme as a fully independent and impartial Ombudsman service.

21. Those rules seem still seem to me remarkably fit for purpose even six years later. One might have expected that the need for at least a few changes would have been identified by now, but I cannot see any great need for that. Whilst some complainants, in responding to the customer survey would like the Ombudsman to have more extensive powers, more like those of a regulator than an Ombudsman, I cannot see that that would be appropriate. The two roles are different.

22. The second big change has been the volume of work. In the last full year before my appointment (2004-05) the Ombudsman completed nine investigations. Over the seven years I have been in post I have investigated an average of 25 complaints a year, with a peak of 39 in 2007-08 before numbers settled down to an average of about 22 in the last three years. The initial rise was probably attributable to the improved complaints procedure introduced by British Waterways in about 2005, which made it easier to access the Ombudsman. Recently, British Waterways have been recording far fewer complaints than they did at the peak of 2005. As noted earlier it will be important that there continues to be easy access to the internal complaints system and the Ombudsman for those who wish to complain.

23. The third big change, reflecting changes everywhere, has been the use of computers and internet. In 2005 I inherited no computerised records from my predecessor and the scheme had no website. I developed a basic computer records system, had a website set up and began issuing annual reports such as this electronically rather than in hard copy. A large majority of complaints and enquiries now arrive by email rather than by telephone or by letter. Ease of access to information and advice by electronic means also probably accounts in part for the increase in enquiries - I have dealt with nearly 700 over the last seven years - and for the significant reduction in the number of those misdirected to the Waterways Ombudsman. In the early years there seemed to be a surprising number of people seeking help from the Waterways Ombudsman with plumbing or water supply problems!

24. What has not changed so much is the nature of the complaints investigated. In the early years I had more complaints from waterways businesses, particularly at one point linked to concerns from some of the marina trade about the establishment of BWML, and I have had few complaints from businesses in recent years. But otherwise the complaints still cover a similar range of mainly boating and property related issues. Some issues, particularly those exacerbated or created by the unhelpful and sometimes inconsistent clutter of Waterways legislation, crop up very regularly. I would number among those continuous cruising, houseboats, mooring management, mooring fees, insecurity of residential boaters and 'end of garden' moorings. I can deal with individual cases but unfortunately cannot myself resolve any of the significant underlying issues with the law.

25. Working as an Ombudsman almost always involves disappointing or annoying at least one of the parties to a complaint, as by the time the Ombudsman is reached, opposing views and attitudes have often hardened. But I am pleased to say that British Waterways' staff and the vast majority of complainants have still treated me, and more importantly my decisions, with courtesy even in that difficult situation. I have also been lucky enough to have the support (and appropriate challenge) of a very knowledgeable Committee, overseeing the scheme. I am very grateful for all of that.

26. It has been a fascinating and largely enjoyable time, and I wish my successor well.

Hilary Bainbridge
[Waterways Ombudsman](#)

Detailed data on enquiries – 2011-12

Group		
A	Not relating to British Waterways	5
B	Premature: internal complaints procedure not complete	38
C	Not in jurisdiction (other)	4
D	Eligible for investigation	16
	Total	63

Group A

For the first time ever, although this group of complaints did not relate to British Waterways, they did all relate in some way to waterways issues, rather than being about matters such as water utilities as was common in the past. Three related to other navigation authorities, one to work by a commercial boatyard and one largely to actions of a local authority.

Group B

This group includes all enquiries made relating to British Waterways, which might be in my jurisdiction, but which had not yet completed the complaints procedure. One or two were more requests for information than complaints. However the vast majority were from people with a grievance about the actions of British Waterways, but who approached me prematurely (ie before completing British Waterways' complaints procedure). I encouraged them to use and complete the internal complaints procedure, and to come back to me if they remained dissatisfied when they had done that. I rarely know the outcome, unless I later receive an eligible complaint, after the internal complaints procedure has been completed. The majority of these enquiries related to boating issues, though a range of other matters also arose. The single biggest group were about delays by British Waterways in paying refunds of licence or mooring fees owed.

Case examples

1. A man complained that although he had first contacted British Waterways (and provided relevant documents) about a refund of mooring fees in January 2011 when he sold his boat, he had still not received a refund by the end of July: even though he had emailed about it several times in the intervening period and been told in May, after sending information again, that he would receive a reply shortly. I advised the man how to make a formal complaint to British Waterways and encouraged him to contact me again if that did not resolve matters. I have heard no more so assume that that finally led to matters being resolved.

2. Another man complained about the safety of a swing bridge. His family had been crossing the bridge when barriers were activated by a boater. He said that there had been no audible warning before the barriers came down and one of his children was nearly hit by a barrier and was then separated from the rest of the family. He also said that the bridge was lower than the pavement which then resulted in another family member tripping and sustaining cuts which required hospital treatment. He was anxious to see matters rectified, to avoid someone being seriously injured. Again I heard no more after advising the man how to pursue a complaint.

3. The Citizens Advice Bureau (CAB) contacted me on behalf of a man who had had difficulty over a number of years when British Waterways pursued him, eventually as far as sending bailiffs and starting Court proceedings, for mooring and licence fees even though these had been paid directly by the Council as housing benefit. Eventually British Waterways offered £500 in compensation which the man agreed to accept along with an apology. However, when the money had still not been paid after a further nearly two months, the CAB contacted me.

It appeared that the matter had never even been registered as a complaint under the formal complaints procedure, but I made some enquiries as I was very concerned by what I had heard. I discovered that an apology letter and a cheque had finally been sent two days after the CAB wrote to me. The man contacted me to express his pleasure that matters had now been resolved. The CAB remained concerned that, during the years they had been dealing with British Waterways, no-one had ever suggested that they could pursue issues through a formal complaints procedure, and said that when they sought figures to back up British Waterways' demands for payment, none of the accounts seemed to them to add up. However they too were pleased that the man's case was finally resolved, and told me the man was delighted that I might mention his case in this report.

Group C

This group included a couple of complaints which were made outside the time limits, and one from a large business about charges for discharging water.

Summaries of decisions on all eligible cases

Index of investigated cases

Case No 491 – continuous cruising

Case No 556 – damage to boat while being towed, after weed entanglement

Case No 558 – handling of proposals put to British Waterways, enforcement action and of subsequent complaint

Case No 563 – mooring charges in BWML marina

Case No 569 – parking at wharf

Case No 570 – management of environment adjacent to canal

Case No 571 – works adjacent to lock and signage

Case No 572 – cull of pike

Case No 574 – standards and procedures at BWML marina, handling of complaint and intimidation

Case No 575 – misleading statement in press release

Case No 579 – adequacy of British Waterways' response to a complaint about a member of staff

Case No 580 – effect on mooring of adjacent funfair

Case No 584 – fees for six month boat licences

Case No 588 – charges for end of garden mooring, complaint handling

Case No 592 – problems entering the Grand Union Canal from the Thames

Case No 596 – management of canal, communications, licensing and complaints handling

Case No 604 – management of visitor moorings and the holding of events there

Case No 608 – maintenance of mooring and canal, and communications

Case No 613 – volunteer lock keepers, maintenance and management of waterway

Case No 617 – enforcement action regarding continuous cruising, and collection of licence fees after termination of licence

Case No 619 – refusal to disclose name of person giving misinformation about complainant's boat

Case No 620 – response to evidence of accidents/incidents and complaint handling



Case No 491 – continuous cruising

British Waterways wrote to the complainant saying that their sightings did not indicate that her boat was moving sufficiently to comply with legal requirements regarding continuous cruising. The letter mentioned the possibility of her licence being taken away, and the boat being removed following service of legal notices. The complainant argued both that her boat was moving sufficiently and that British Waterways were acting wrongly and beyond their powers in the way they had dealt with matters, as well as raising various related issues. I suspended action on the complaint for some time pending a Court case which might have clarified some legal points raised, but which sadly did not do so. Most of the key points were ones which I could not resolve (because they related to disputed points of law) or fell within the remit of the Information Commissioner and were therefore inappropriate for me to attempt to determine. On some others I found no evidence that the complainant had suffered injustice from maladministration or unfairness.

However, as a result of my involvement British Waterways did apologise to the complainant about an inaccuracy in one of their letters about how far her boat had travelled, and agreed to record that their own records showed she had travelled further than at one point they had previously said the records showed.

Case No 556 – damage to boat while being towed after weed entanglement

Mr A wished to take his boat through the Forth and Clyde Canal as part of a journey to Europe, but experienced repeated and serious problems with weed entanglement. British Waterways' staff offered to tow the boat, by hand, back to a safer area. Mr A later found that one of the boat's propellers was broken. He says that he found the broken part underwater at a point where the boat had become grounded whilst under tow, and that lumps of stone, which he thinks were riprap which had collapsed from the bank, were adjacent and had caused the damage. He felt British Waterways should compensate him for the repairs to the boat and the extra costs of the alternative route he had to take after they declined to allow him to proceed. British Waterways said that other boats had used that part of canal successfully at the same period without needing assistance because of weeds, and none had suffered damage from debris. They also said that Mr A had remained responsible for steering the boat, that the canal had soft banks at that point and it was unlikely that a stationary propeller would break in the way described unless it had previous significant damage.

Overall I could not see that the evidence showed that British Waterways were at fault in the way they towed the boat or that they could be held responsible for the propeller damage. It seemed more likely that that was simply bad luck in hitting a previously unknown rock, with a propeller which was perhaps already weakened in some way, unknown to Mr A. It seemed that the particular design of Mr A's boat (an unusual type not generally found on

canals) had made the weed more of a problem. I did not think I could criticise British Waterways staff for saying ultimately that he could not proceed, as he wished, by repeatedly diving under the boat to clear weed, or pushing it with a dingy. They had refunded the fee he had had paid to use the canal and offered free passage by an alternative route. I did not uphold the complaint.

Case No 558 – handling of proposals put to British Waterways, enforcement action and of subsequent complaint

Mr B made a proposal to British Waterways that (for a fee) they could use his boat for CCTV and other monitoring of a canal. I could see no grounds to criticise British Waterways for their decision not to pursue this scheme. Mr B did not buy a new boat licence straight away when his expired and British Waterways contacted him about that and about nuisance complaints which had been made, which might have related to his boat (though he strongly denied that). I could not see that British Waterways had ever given Mr B grounds for his belief that a special licensing arrangement had been made (or would be made) as a result of his monitoring proposal, and that therefore he did not need to obtain a standard licence as usual. To the contrary they had tried hard to persuade him to obtain a new licence, in the period before he incurred a late payment charge. I could see no grounds for me to ask that that charge, levied when eventually he did renew his licence, was refunded to him. I did not think it unreasonable for British Waterways to have let Mr B know that concerns about nuisance had been expressed: but when there were no other consequences I could not see that any further investigation by me was required.

British Waterways had apologised in respect of some communications issues, when they investigated the complaint. I felt it was appropriate that those had come from senior staff on behalf of the organisation, rather than individual staff as Mr B wished. Nor could I see that there were any useful or appropriate recommendations I could make in respect of communications issues more generally as he wished. I did not uphold the complaint.

Case No 563 – mooring charges in BWML marina

A couple complained that BWML had not made it sufficiently clear, when offering a mooring, that their residential widebeam boat would incur such a large additional charge. When the couple first took the mooring, the terms and conditions simply referred to a surcharge being applied to widebeams 'dependent on berth availability'. No indication of the level of surcharge was given. For the first year the surcharge was about £70, which the complainants felt was reasonable. However in the second year they were invoiced for a surcharge of nearly £750. My enquiries showed that it was only after the couple had moved to the marina that BWML decided the surcharge there should increase to 30%. BWML wrote to inform customers in June 2008, but the letter did not go to the complainants' marina address and did not reach them. They first found out about the rise in November 2008 when they received their invoice for 2009. Because of the lack of adequate notice to

the complainants, BWML agreed that they need not pay the higher surcharge until 2010. Given the annual nature of the contract, I did not think that I could say that they had been given inadequate notice, having known for over a year before the higher charge was finally imposed on them in 2010.

The couple also complained about the application of BWML's pricing policy at the marina with respect to widebeam boats. They questioned why they should pay more in total than at another BWML marina with more facilities, and why the charge was more than at most marinas on a list of comparators, which did not charge extra for widebeams. The other BWML marina is in a very different setting, which was likely to explain the price difference. Many of the marinas on the comparator list did not publish prices for residential use: the prices quoted for leisure use were likely therefore to be significantly less than the market rate for the complainants' grade 1 mooring, where BWML allowed residential use. Although BWML's papers contained no comparators on widebeam surcharges, I searched on the internet for information about surcharges in other marinas, and found they varied from 15% to 100% with an average of about 30%. Whilst I certainly could not say that the basic charges, or widebeam surcharge were 'correct', I did not find evidence that they were out of line with market rates. I did not feel that I could say the complainants had suffered injustice as a result of maladministration or unfairness in that regard. I did not uphold the complaint, but did point out that I would expect BWML to be willing to negotiate a reasonable payment schedule with the complainants regarding any outstanding fees.

Case No 569 – parking at wharf

Mr C complained that British Waterways had allowed excessive parking on a wharf opposite his home. Following Mr C's initial contacts with them British Waterways had introduced some of the controls on parking which Mr C had sought, but not all. I considered that British Waterways had acted as a reasonable neighbour in taking into account Mr C's views, but that in the end they were entitled to reach their own views about the use of their own land. My view was on the assumption that British Waterways were not in contravention of any planning controls: but that was a matter Mr C would need to take up with the local planning authority. I did not uphold the complaint.

Case No 570 – management of environment adjacent to canal

Mr D initiated a complaint about the way British Waterways were managing land they owned adjacent to a canal, and dealing with the actions of various boaters who moored in that area. However he did not provide much detail of his complaint and, although he had indicated that he saw his complaint as very urgent, my efforts to obtain more information from him were unsuccessful. Eventually, as I did not feel I could pursue the complaint without the requested information, I closed my file.

Case No 571 – works adjacent to lock and signage

British Waterways carried out various works, including installing a pontoon and a boom across a connecting waterway, in an area where boats often need to turn adjacent to a lock. Mr E complained about the new arrangements which he felt were dangerous. Following their own investigations of Mr E's complaint, British Waterways agreed to consider making some revisions to the arrangements to take into account Mr E's concerns, but not the significant changes he sought. They also said that the signage required radical improvement. I felt that British Waterways had taken Mr E's concerns seriously, that essentially the complaint was a disagreement about what was a reasonable, safe, technical design solution to previous issues in that part of the waterway. I had no power simply to substitute my judgements on that for those of British Waterways, and could see no scope for me to insist that British Waterways acted as Mr E wished. I did however pursue matters for some time to ensure that British Waterways followed up on the commitments they had given to Mr E regarding the arrangements and the signage. I ended my involvement when eventually those issues were resolved to my satisfaction.

Case No 572 – cull of pike

Mr F complained that British Waterways had caught and killed a significant number of pike in a particular waterway. He felt that that action was unjustified and that the fish had been natural, not ones dumped there as British Waterways believed. British Waterways had accepted that more consideration should have been given to relocating the fish rather than killing them, agreed that there would be a presumption in favour of that in future and that the incident would be discussed at the next National Angling Advisory Forum. Mr E did not feel that that went far enough. He wanted a commitment that British Waterways would stop all electrofishing and culling 'based on rumour' and for that decision to be publicised on their website. I did not think I could ask British Waterways to give a commitment never to cull and, in principle, the Advisory Forum seemed an ideal place to draw together the views of anglers. I could not see that I could properly recommend any more than had been agreed already, and so I did not uphold the complaint.

Case No 574 – standards and procedures at BWML marina, handling of complaint and intimidation

Mr G complained about a significant number of different issues affecting the running of the marina where he moored his boat. He felt that those arose from underlying failures in procedures and management of the marina by BWML, and meant that they were not complying with the terms and conditions. BWML had carried out a detailed investigation into his concerns and produced an action plan. As always, I focussed on whether there were still outstanding issues. I found that BWML had a number of procedures for reviewing safety and maintenance issues at the marina, which did not seem out of line with what I might have expected. They also had an annual safety

audit by an external body. However I did also find that there were some issues not fully resolved by the action plan, which called into question whether there were sufficiently robust procedures to draw together and implement a fully co-ordinated plan. Therefore to a limited extent I upheld that aspect of the complaint. I recommended that BWML reviewed their processes to consider how they could plan and implement improvement works to ensure that they could meet their commitment – to provide a ‘good quality, well designed and maintained’ environment and infrastructure – and future commitments in their new service standards.

Unfortunately BWML’s initial detailed response also included some comments about Mr G’s use of the site which I felt were entirely inappropriate: one in particular which was bound to make Mr G feel threatened and that that had been provoked by his complaint. Tensions between the parties escalated very significantly. Each felt the other’s further actions were inappropriate and, after Mr G left a meeting to discuss renewal of the mooring contract, BWML gave notice to terminate it. I would generally expect BWML, when considering the possibility of declining to renew a contract because of concerns of this sort, to give a customer prior notice of their concerns and a chance to refute those and/or change their behaviour. That did not happen here. When my investigation of Mr G’s complaint was still underway, it was even more inappropriate simply to give him notice, especially when that was due to expire before I could be expected to have completed my investigation. I therefore issued a draft of part of my report raising these concerns. BWML then agreed to suspend any requirement for Mr G to move his boat until I had issued my final report.

I could see why each party genuinely believed they had acted properly in the face of considerable provocation from unreasonable behaviour by the other. I could see how from Mr G’s perspective he found himself being asked to leave the marina, simply as result of raising concerns about its management, when he had good intentions and was entitled to do so under the complaints procedure. But I could see how from BWML’s perspective they now had a customer whose complaint they responded to with a very detailed action plan, only to find themselves subject to even stronger and more widespread criticism to which they could see no end if his boat remained at the marina.

However, the downward spiral started when BWML included in their complaint response comments about Mr G’s use of the site. I considered that that was maladministration which caused him injustice. Whatever the intention, I could see why anyone might find those remarks somewhat intimidating. I also regarded the timing of the termination notice as maladministration, though the injustice caused was largely remedied by its suspension. I upheld the complaint to the extent described above.

In my recommendations I had to consider how, as far as possible, to put matters back into the position they would have been in if all had been done properly. Even without the inappropriate comments in BWML’s complaint

response, I think they might still have wanted to check Mr G had the appropriate level of mooring contract before they offered another full year's contract: this was an issue they had raised with all moorers. But the contract renewal and complaint issues would probably not have become so embroiled. On balance I did not think that Mr G would have been given notice. However having reached this point, I could see that it would be extremely difficult to get relations back onto an acceptable level again: both parties felt so intimidated and angered by the other. Matters could not carry on as they were. I could not expect BWML to continue to offer Mr G a mooring at the marina if he was not willing to try (along with BWML) to put relations back onto a significantly better footing, once the complaints procedure was complete.

I recommended that, if Mr G still wished to keep his boat in the marina, BWML offer a meeting with him (and any friend or advocate he wished) chaired by an independent mediator. The purpose would be to see if any agreement could be reached on re-developing enough of a relationship to make his boat remaining in the marina a viable proposition, both for him and for marina staff. BWML should make the offer, give Mr G a reasonable chance to respond and, if he accepted, give a reasonable time for the process to succeed. They should not insist that he removed his boat before then. I also recommended that that, if BWML really did not intend their Grade 2 service to include the right ever to stay overnight in the winter, they should consider revising the contract to make that much clearer.

Case No 575 – misleading statement in press release

I decided it would not been appropriate to make a determination in this case which hinged on a disputed point of law. This related to whether the decision of a Judge in the case of British Waterways Board v Paul Davies was binding on District Judges (as British Waterways had said in a press release) rather than simply persuasive.

Case No 579 – adequacy of British Waterways' response to a complaint about a member of staff

A customer complained that British Waterways had not taken adequate action about an incident when a member of staff intervened in a discussion with a third party, and an altercation ensued. British Waterways had accepted that the member of staff had behaved inappropriately, said they believed the staff member regretted their behaviour and apologised for it. However the customer did not think that response was good enough or that matters had been investigated thoroughly. I found that British Waterways had made efforts to interview those involved to try to get a clear picture of events, but the accounts given, especially about the language used, varied significantly. The matter was complicated by the fact that some or all of the parties were previously known to each other. I felt that the apology from British Waterways (rather than directly from the staff member, as the complainant wished) was appropriate and could not see that I could reasonably hope to

achieve more through further investigation than had been achieved already. I took matters no further.

Case No 580 – effect on mooring of adjacent funfair

Mr H complained about the way British Waterways were managing a site adjacent to his mooring, which they had leased to a funfair. He raised various issues including about safety of rides close to the edge of the water, electrical wiring and removal of a hedge. I found that the terms of the lease did not give British Waterways as much power to control the use of the site as Mr H would have liked. They had agreed to try to get the funfair operator to put some of the vegetation back, and said they were doing regular checks on the waterway wall adjacent to the rides. However I could not see that I could reasonably insist that British Waterways took the action regarding the site which Mr H wanted. I did offer to ask British Waterways to reassess the mooring fees for Mr H's boat, since it seemed that the site was now less attractive than it had been, but he did not take me up on that offer.

Case No 584 – fees for six month boat licences

Mr J originally complained to British Waterways about their decision to make six month licence fees 85% of the annual fee for 2011. Previously the six month fee had been set at 60% of the annual fee and the change led to an increase of 49% which Mr J considered excessive. Following his complaint British Waterways agreed to reduce the fee by 20%, but Mr J remained dissatisfied. He argued that even after the reduction (which meant that prices had increased by 19% compared to 2010), the slightly higher overhead cost of administering six month licences rather than 12 month ones did not justify the price difference between the two.

My enquiries found that the original decision seemed to have been based on an idea (not made explicit) that eventually British Waterways might move to withdrawing three and six month licences altogether. However they had since had second thoughts about that, and were no longer planning to go down that route. They were however intending to review matters further over the next 18 months. It certainly appeared that the original decision to impose a 49% increase was not well thought through or explained. However I had to consider action following British Waterways' response to the complaint. In principle I felt that British Waterways were entitled to structure licence pricing to reflect not just actual costs but also, to some reasonable extent, policy objectives. On balance I took the view that the ultimate 19% increase had not arisen as a result of maladministration or unfairness, and therefore I should not uphold the complaint to me.

Case No 588 – charges for end of garden mooring, complaint handling

Mr K complained because he did not believe British Waterways were entitled to have charged him to moor on the canal at the end of his garden and that, even if they had been, they should not have charged him so much. He no longer used the mooring.

I felt that British Waterways had made a reasonable case to support their view that they were entitled to charge Mr K for the mooring, and did not uphold that aspect of the complaint. However British Waterways had recorded in 2009 that there had been no interest in their own moorings in Mr K's area. The price of moorings in that area had been used to calculate the price for Mr K. That did seem to suggest that his mooring may have been overpriced and consideration should have been given to basing the market rate for Mr K's site on rather less than the published local rate. There did also seem to have been some significant delays and difficulties in the way his complaint had been handled. Prompted by me, British Waterways agreed to offer Mr K £200 in full and final settlement of his complaint. With some reluctance, he eventually accepted that. I considered the matter resolved.

Case No 592 – problems entering the Grand Union Canal from the Thames

Mr M missed the turn from the tidal Thames onto the Grand Union Canal and became stranded on the river, overnight, until the tide turned. Once he reached the canal there was a delay in granting him access through the lock because he did not have a licence. However Mr M was en route to a new mooring off British Waterways' waters, in order to comply with a court order. I did not uphold his complaints about the signage on the Thames, that he had been left stranded on the river and the delay in letting him travel through the lock. British Waterways had said they would look into the signage, though I could not see that they were under any strict obligation to provide a sign and indeed had no power to put one on land they did not own. As skipper, planning and timing a safe route was Mr M's own responsibility. There had only been a short delay in arranging access to the canal, and during that time Mr M's boat had been moored safely in front of the lock.

Case No 596 – management of canal, communications, licensing and complaints handling

Mr N asked me to consider three separate complaints he had made under British Waterways' internal complaints procedure, on quite a wide range of issues. The responses he had eventually received from three different British Waterways' senior managers were generally thorough and clear, giving apologies and taking action where appropriate and I could not see that I could achieve more by taking matters further. Some of Mr N's concerns were essentially disagreements with difficult management decisions about resource allocation with which I could not reasonably interfere. Mr N was also concerned about number of issues which had arisen, the length of time the complaints process took and that matters had not been addressed as thoroughly as he wished until the second stage of the procedure. I thought it a pity that Mr N had had cause for so many concerns in such a short period and that they were not resolved at the first stage of the complaints procedure. However, whilst the handling of his complaints was not perfect, I did not consider it was so poor ultimately as to warrant the compensation he sought.

Case No 604 – management of visitor moorings and the holding of events there

Mr P complained that British Waterways had delegated responsibility for managing some popular visitor moorings to a waterways society, and had failed to ensure that the site was properly managed. Mooring shortages were caused when weekend events took place. I found that British Waterways had not in fact delegated responsibility for managing moorings to the society, only agreed that it should monitor the 48 hours moorings and inform British Waterways if boats overstayed. Mr P's original complaint to British Waterways had highlighted some concerns, particularly about organisation of events, and other points had been clarified since. On balance I did not feel there were grounds to criticise British Waterways for their actions after Mr P raised further concerns following his original complaint. It seemed to me that Mr P had already achieved a significant amount in highlighting the issues involved and prompting British Waterways to liaise more closely with other bodies involved. I did not think further investigation by me would be likely to achieve more.

Case No 608 – maintenance of mooring and canal, and communications

Mr Q felt that British Waterways should carry out more maintenance work, and schedule regular maintenance more frequently in the area where he moored his boat. Most of the works Mr Q wanted to see done were scheduled to be completed in the following few months. The photographs he sent did not show problems so severe that I could say it was wrong that British Waterways had not given them higher priority. British Waterways had already explained and apologised for difficulties Mr Q encountered in contacting British Waterways and operating the complaints procedure. Overall I did not feel I could achieve more than Mr Q had achieved already.

Case No 613 – volunteer lock keepers, maintenance and management of waterway

Mr R raised a range of concerns about the way a particular waterway was managed, but most were more disagreements with policies or priorities rather than issues of maladministration or unfairness which I could consider. I followed up some issues to check that actions promised by British Waterways were in hand, but accepted that the works involved were not ones I could necessarily expect could be done straight away. I did not take matters further.

Case No 617 – enforcement action regarding continuous cruising, and collection of licence fees after termination of licence

It was not clear to me that British Waterways were necessarily acting outside the law to say that the complainants had not complied with the navigation requirements for boats without home moorings. The complainants had argued that their movements were limited because of the size of their boat and availability of suitable moorings on waterways to which they had access.

However British Waterways had offered to help the complainants find other moorings so they could travel further, or to arrange a mooring at one site over the winter. I was concerned that, after asking the complainants to keep a movement log, British Waterways had not asked to see that before serving formal enforcement notices. However they had asked for the log later and it was clear that, even if they had seen the log sooner, they would still have wished to serve notices. So, whilst I drew my concern to British Waterways' attention, I did not consider that I should uphold that aspect of the complaint or take matters further.

After I questioned why British Waterways had continued to take the complainants' licence fees by direct debit for several months after the licence was revoked, British Waterways told me they would cancel the direct debit, apologised to the complainants and sent a refund cheque. I regarded that as sufficient to resolve that aspect of the complaint.

Case No 619 – refusal to disclose name of person giving misinformation about complainant's boat

Mr R complained that British Waterways had declined to tell him the name of the person who had wrongly reported to them that Mr R's boat was moored where it should not have been. The crucial issues in the case related to the application of the Data Protection Act. Because the Information Commissioner has particular responsibility and expertise in that area, and Mr R could contact his office directly without incurring any fee, it did not seem to me to be appropriate for me to make a decision on those matters. I gave Mr R advice on contacting the Information Commissioner, who was the best person to deal with the relevant matters.

Case No 620 – response to evidence of accidents/incidents and complaint handling

The complainant said that British Waterways had refused to investigate evidence he had given them about accidents and incidents caused by works carried out on a particular waterway (the same works as in case no 571). I could see that the complainant had expressed concerns about the arrangements, but I had already dealt with the issues in the other case (and British Waterways had already provided him with my views about that). But I could not see that he had ever provided British Waterways with the sort of evidence of accidents or incidents which might make it maladministration for British Waterways not to have organised further detailed investigations. I did not therefore uphold his complaint. I could see that the complainant did have to ask British Waterways more than once about how to access the complaints procedure, but he had been able to complain shortly afterwards. Full details are available on the internet to which the complainant also had access. I could not see that he had suffered such a significant injustice that detailed investigation of that point would be justified.

How to contact the Waterways Ombudsman

If you have a complaint about British Waterways (in England and Wales) or the Canal & River Trust you need first to use the Trust's own complaints procedure. Information about that is available by following a link from the 'contact us' page of the Trust's website <http://canalrivertrust.org.uk> or by calling them on 0303 0404040, or by email to customer.services@canalrivertrust.org.uk.

If you remain dissatisfied after completing the Canal & River Trust's 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

More information about the Waterways Ombudsman Scheme and how to complain can be found on the Scheme's website at www.waterways-ombudsman.org.

If you have a complaint about the actions of British Waterways in Scotland or about Scottish Canals I will not be able to help. You need first to use Scottish Canals' complaints procedure. Information about that is available by following a link from the 'contact us' page of their website www.scottishcanals.co.uk or by calling them on 0141 332 6936, or by email to enquiries@scottishcanals.co.uk.

If you remain dissatisfied after completing Scottish Canals' complaints procedure, you need to contact the Scottish Public Services Ombudsman.

SPSO
Freepost EH641
Edinburgh
EH3 0BR

Telephone: 0800 377 7330

Website: www.spsa.org.uk