




THE WATERWAYS

OMBUDSMAN




Annual Reports of
The Waterways Ombudsman Committee
and
The Waterways Ombudsman
for 2006-07



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Annual Report of the Waterways Ombudsman Committee for 2006-07

1. This is the second annual report of the Committee, covering the period April 2006 to March 2007. 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 Committee has eight members. Of those, three (including the current Chairman) are independent and three are appointed by the British Waterways Advisory Forum (ie from groups, such as users and businesses, with interests in 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.
2. The main roles of the Committee are:
 - the appointment (or removal from office) of the Ombudsman;
 - keeping the operation of the Scheme under review, both to ensure that it meets its purposes and that it is adequately funded;
 - to receive reports on the method and adequacy of publicising the Scheme;
 - to publish an annual report.

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

3. The Committee has agreed that it will generally meet approximately every six months and, during 2006-07, met in July and December 2006. During the year one minor change was made by British Waterways to the Rules of the Scheme. That was to increase the normal quorum of the Committee from four to five. This change was accepted willingly by the Committee as it facilitated the acceptance of the scheme by the British and Irish Ombudsman Association (BIOA) as suitable for full voting membership within the Association. That membership was granted by BIOA in October 2006 and is only given to Ombudsmen in schemes which meet the Association's rigorous criteria covering independence of the Ombudsman, effectiveness, fairness and public accountability. It provides recognition that although the Scheme is small, it meets the same high standards as other larger and better known Ombudsman schemes. The full rules of the Scheme can be found on the website at www.waterways-ombudsman.org.
4. During the year the Committee has considered information provided by the Ombudsman about many aspects of her work and the Scheme's operation, and information from British Waterways about the funding of the Scheme. British Waterways have also given the Committee access to background information about their own complaints statistics. Issues considered by the Committee have included:
 - workload and performance data;
 - productivity;
 - adequacy of funding for the scheme;
 - publicity (including the arrangements for a Waterways Ombudsman Scheme website, which went live in January 2007);
 - contacts between the Ombudsman and stakeholder organisations;
 - measuring customer satisfaction.

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5. The Committee Chair also reported to the Committee on approaches made by two individuals expressing concern about particular aspects of the Ombudsman's work. In neither case did the Committee feel that any remedial action was required. In connection with that, at the Ombudsman's request, they provided her with guidance on dealing with the issues which can arise when hospitality is offered at relevant meetings and events.
 6. The Committee have noted with satisfaction that British Waterways had met all proper costs connected with Scheme and that no difficulties over funding had arisen.
 7. The Committee made clear to the Ombudsman its expectation that she would continue to work to improve awareness of the Scheme amongst waterways users and provide appropriate feedback to British Waterways.
 8. There was also a preliminary discussion by the Committee about the development of a system to seek feedback from users of the scheme. It was agreed that work should go ahead to develop a suitable mechanism, to be operated by the Committee. That work was still underway at the year end.
 9. The Committee has been satisfied with the overall operation of the Scheme during 2006-07, though it remains conscious of the need to remain vigilant to ensure the Scheme continues to meet its purposes, and is properly funded.

Members of the Waterways Ombudsman Committee

Chairman

Professor Jeffrey Jowell QC, Professor of Law, University College London; a member of the Royal Commission on Environmental Pollution and of the Board of the Office of Rail Regulation.

Other Independent Members

Michael Reddy, Deputy Adjudicator and Chief Executive of the Office of the Independent Adjudicator for Higher Education.

Miles Smith, a solicitor, was formerly Director of Corporate Services and statutory monitoring officer at the London Borough of Croydon. Subsequently he became an Associate Director with KPMG.

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

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

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

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Introduction

1. This is my second annual report as Waterways Ombudsmen. It covers the period from April 2006 to March 2007 – my first full year as Ombudsman since my appointment in July 2005. I have been working hard, since the Scheme's major revision last year, to get the new scheme properly established and better known and understood. The casework has remained at a very similar level to last year, very much higher than in previous years.

The Scheme

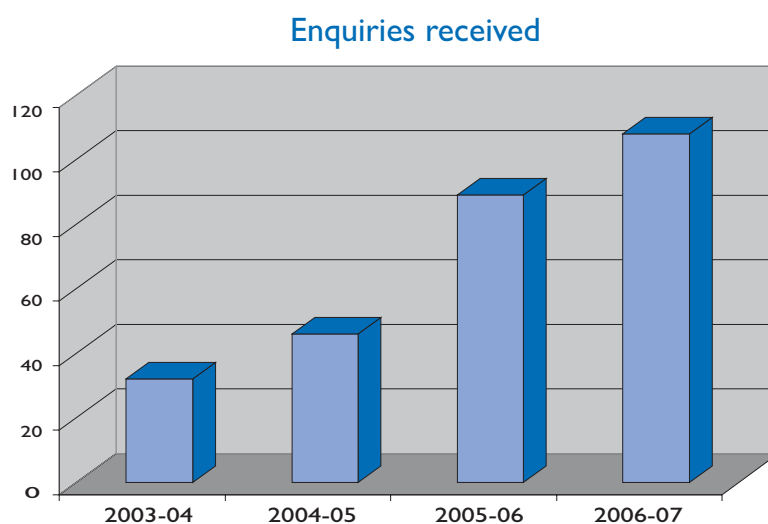
2. I reported last year that I had submitted an application to the British and Irish Ombudsman Association (BIOA) for full voting membership. This is only granted where schemes meet a set of criteria relating to the Ombudsman's independence, accessibility to the scheme, the procedures and powers available and the implementation of recommendations. I am pleased to report that, following a rigorous validation process, that application was successful in late 2006. This provides evidence that the Scheme (and the level of independence of the Ombudsman) meet the high standards the public are entitled to expect.

Website

3. One other significant development for the Scheme has been the setting up of its first website: at www.waterways-ombudsman.org. This went online in January 2007 and information about it was provided to a range of waterways and some general advice organisations. Previously some information about the Scheme had been available on British Waterways' website, but this is the first time it has had its own independent site. It is too soon to judge the overall impact of the website, but records show it is already having hundreds of new visits each month. One complainant who contacted me recently after visiting the site, made a point of telling me how clear he had found it. However no doubt there will be room for improvement and any suggestions would be welcome.

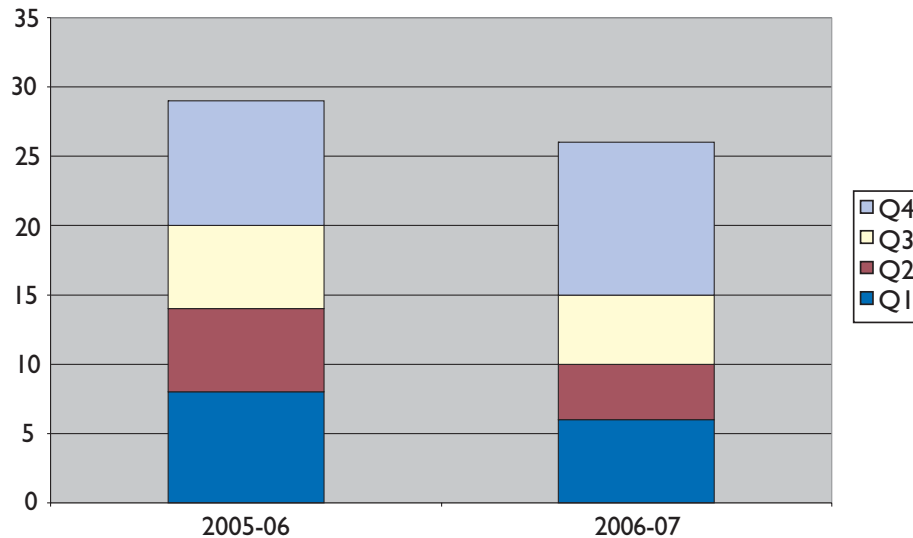
Casework – workload

4. The number of enquiries has risen by 21% from last year to 108. The last quarter was the busiest with 37 enquiries. See Annex A for more details.



5. The initial indications this year were that the number of complaints in jurisdiction was falling from a peak last year and was likely to settle at a figure significantly below the 2005-06 figure, although still well above the number in previous years. However the last quarter of the year saw a sudden sharp increase bringing the total of new complaints in jurisdiction up to 26: only three fewer than last year.

New complaints in jurisdiction per quarter



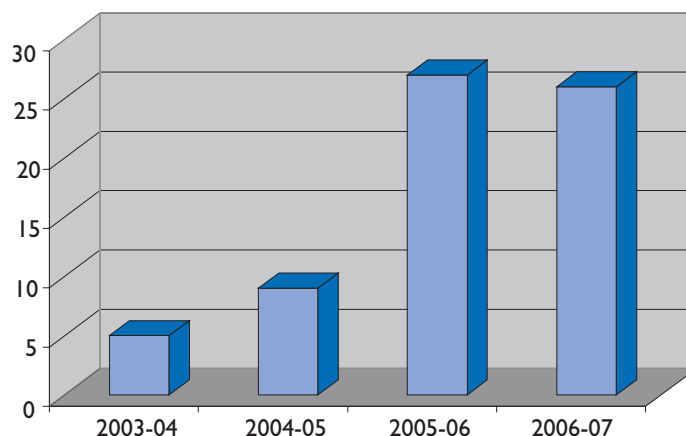
6. This increase in the final quarter might have various contributing factors:

- seasonality, with more complaints arriving in the winter and some triggered by annual announcements of price rises;
- purely random fluctuations;
- effects of financial cuts at British Waterways beginning to affect performance and / or customer satisfaction.

In the first quarter of 2007-08 even more complaints were received than in the final quarter of 2006-07, and many more than in the same period in previous years. All in all this suggests that the 2007-08 figure for new complaints is likely to be significantly above even the 2005-06 level.

7. Work was completed on 26 complaints during the year, one complaint fewer than last year.

Decisions on cases in jurisdiction



The complaint was upheld in whole or in some part on 14 of those cases. In two cases rather than carrying out detailed investigation, I was able to negotiate a settlement of the matter. In another case the complaint was withdrawn, towards the end of a very detailed and complex investigation. The remaining cases were not upheld.

8. During the year 24% of cases were completed within 3 months and 68% within six months: 12% (3 cases) took more than a year. Those oldest cases were all complex ones inherited from my predecessor and affected by delays during the transitional period.
9. The sharp increase in workload in the final quarter of 2006-07 meant that, after any backlog of work had been eliminated earlier in 2006, some queuing of cases was inevitable again in early 2007. By the end of March 2007 there were 15 cases still under investigation (the same number as at that point last year). Two of those were close to completion with a draft decision already having been prepared and issued to the complainant and British Waterways. Of the remaining 13 cases which had not reached that stage, one was more than a year old, three were between nine and three months old, and the remainder were less than three months old.
10. As previously most complaints investigated were from people using boats for leisure or residentially, though one was from a commercial boat operator. There were a few from people operating businesses relating to the waterways. However again there also were significant numbers (six) from what one might call neighbours of the waterways: people who live near British Waterways' land and who had concerns about use or maintenance of that land or the waterway itself. Most investigated complaints were about the actions of British Waterways, but one related to a specific marina operated by British Waterways Marinas Limited (BWML). Two complaints related to Wales, and all the others related to England.

Issues arising from complaints

11. Sometimes people ask me to express views about aspects of the overall performance of British Waterways. This is impossible for me to do. Every year millions of people come into contact with them, through a wide range of their activities. Last year less than a thousand people complained formally to British Waterways, less than 100 of those contacted me and less than 30 submitted detailed complaints in my jurisdiction. What I see is therefore a tiny and potentially quite unrepresentative sample of the work of British Waterways. However I do come across some aspects of their work more than others: relationships with boaters and complaints handling in particular and there are some issues which arise from that on which I think I can properly comment.

Complaints handling

12. Whilst British Waterways have now adopted a fundamentally sound complaints procedure, that does not mean there is no scope for improvement:
 - throughout 2006-07 they continued to issue to the public the same complaints leaflet which, when describing the Ombudsman's work, reflected the position before the scheme was revised in late 2005;

- they have not had any formal policy on dealing with unacceptable or unreasonably persistent behaviour by complainants. Having such a policy would be of benefit both to complainants and to British Waterways staff in clarifying how such situations will be handled;
 - issues can still arise about the implementation of the procedure.
13. In one case I saw this year British Waterways had simply failed, within a reasonable timescale, to provide a response to the complaint, either when it was raised locally or centrally and, in accordance with the scheme, I then accepted the complaint directly. This was the first time I had known such a failure to happen. A move of office and staff changes, associated with the reductions in staffing in response to the funding situation, seemed to be contributory factors in this situation. However those factors do not justify such a failure in the complaints system, and I look to British Waterways to ensure that such failures do not occur again.
 14. Whilst I remain grateful for the generally good level of co-operation I receive from British Waterways in my investigations, in the second part of the year in particular, it has taken rather longer than before for me to obtain comments and information from them. Again I suspect issues around the reorganisation may have been a factor. However British Waterways reduced their target for turnaround of complaints under their own complaints procedure during this period, and I expect them to be similarly committed to providing me with timely responses.
 15. British Waterways have not often disputed my findings even when given the opportunity to do so at the stage of a draft report. To their credit they have always accepted the need to apologise to complainants where I have upheld any part of a complaint, and have agreed promptly to adopt my formal recommendations. However their arrangements for ensuring that the action promised under the complaints procedure is in fact implemented have not always been adequate. When I raised the same issue last year with respect to implementation of my own recommendations, British Waterways told me they had reviewed and improved their accountability process for ensuring that actions from complaints were followed through fully and promptly. Whilst I generally I have had reasonable and timely information on action being taken in response to my recommendations, sometimes this year I have still had to chase matters up more than I would have expected. I plan therefore to do work next year to develop further my own procedures for following up on actions promised in response to recommendations.
 16. This year I have also seen some evidence of weakness in British Waterways' procedures for following up on actions agreed under its own complaints procedure. For example in Case No 70, when a resident complained about the state of nearby moorings, in the second stage response he was told that a clean up operation would be undertaken. However that action was suspended when the moorers objected. Although the complainant was informed of the suspension, a promise made to keep him updated was not kept. When I contacted them, British Waterways accepted that handling of the matter had been poor, and said that they would be modifying their tracking procedure for such complaints too.
 17. This case also illustrates another issue which has arisen more than once: what happens where a number of different parties (in this case a resident and moorers) have different perspectives on a complaint or a related decision British Waterways need to make. Problems can arise if, in seeking to satisfy one complainant, British Waterways fail to take adequate account of the views of other likely interested parties. Of course it is not possible to predict every possible objection to a decision before deciding how to act, or to satisfy everyone, but it is important

to look at situations in the round. Promising action to one complainant, then backtracking on that because of predictable objections from another party, is likely to result in both parties being dissatisfied: whereas a more considered approach will at least give a possibility of finding a solution acceptable to all. It is important that British Waterways take this wider perspective both on dealing with complaints themselves, but also in responding to issues I raise from the complaints I investigate.

Policy and practice

18. Complainants quite often ask me to intervene to make British Waterways change their policy on a matter. I have to explain that policy decisions are essentially matters for British Waterways: I am not a regulator who can intervene to outlaw particular policies or practices, but an Ombudsman dealing with complaints of injustice caused by maladministration or unfairness to an individual. But where British Waterways have adopted a policy or procedures on a subject I will expect to find them following those. In pursuing implementation of recommendations on one case, I came across a situation where they were not doing that and felt I had to comment. This was on the question of allowing long term moorings to be transferred with the ownership of a boat. The standard long term moorings and conditions are explicit that moorings are not transferable: but custom and practice had developed in a few places of ignoring that policy and clause in the mooring contract. It was not for me to say whether such transfers should or should not be allowed, but I did have to say that policy and practice needed to be brought back into alignment (in other words either policy or practice, or both needed to change). In doing that of course British Waterways did need to act reasonably in their dealings with existing moorers.

Moorings

19. Over half the investigations I completed this year related in some way to moorings. A number of those were about mooring prices (and I have received a significant number since then about the way 2007-08 prices were set). However some also related to the facilities and services provided at moorings. It is not always clear to moorers what they can expect in that regard, and that does contribute to some complaints: both about the actual services and about the mooring fee. I can see that British Waterways might fear that if they made service standards at moorings more explicit to moorers it might lead to more complaints. In fact not only would it be fairer to boaters, leaving British Waterways more clearly accountable, but it might reduce the risk of complaints based on false expectations. As mooring prices are increasing I imagine boaters are likely to expect greater clarity about what services they will receive for their money.

Developing contacts

20. I announced my intention to put more efforts into this aspect of the work this year. During the year I have attended
- the IWA reception at the National Waterways Festival at Beale Park;
 - British Waterways' Annual General Meeting;
 - (and spoken) at the NABO annual general meeting;
 - the London Boat Show at the invitation of the British Marine Federation.

21. At all these events I made an effort to meet with as wide a range as possible of those who were present: often from a considerable number of 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.
22. In July 2006 I made a short presentation to a meeting of the Board of British Waterways and attended a dinner (along with some representatives of waterways organisations).

Availability of information about the scheme's work

23. As noted below this remains a key action point for next year, although the development of the website has already made an invaluable contribution to this. However a press release on last year's annual report and another on the BIOA membership and the new website received a generally disappointing response from the waterways press.
24. In last year's report I also sought views on the possibility of developing an occasional email newsletter. Given the very limited response to that I have not gone ahead and the website does now make it possible, as an alternative, to post any newsworthy items there from time to time.

Plans for 2007-08

25. Now many of the basics are in place the focus will be on improving and developing the service further. Plans for the year include:
 - improving procedures for following up on recommendations;
 - ensuring that as far as possible operation of the Scheme meets the best practice standards laid down in BIOA's recently published 'Guide to principles of good complaint handling';
 - working closely with the Committee on their plans for setting up a customer satisfaction survey and, once results are available, on responding to those;
 - continuing work to develop further contacts with waterways organisations;
 - reviewing possible options for improving the Scheme's ability to respond more quickly to fluctuations in the workload;
 - further efforts to improve availability of information about the Scheme's work, especially with the waterways press.



Hilary Bainbridge
Waterways Ombudsman

Detailed data on enquiries – 2006-07

Group		
A	Not relating to British Waterways	28
B	Premature: internal complaints procedure not complete	51
C	Not in jurisdiction	3
D	Eligible for investigation	26
	Total	108

Group A

Two of the complaints related to the Environment Agency's responsibilities for waterways and I referred the complainants on to the appropriate complaints system. Two related to other navigation authorities for which, regrettably, I was unable to identify any formal complaints system.

I also referred all the other complainants on, where I could identify a complaints system they could use. As previously a number of these complaints related to water supplies, though most did not and they covered a very wide range of consumer issues. Some had other tenuous water links (such as a complaint about a booking for a cross-channel ferry), but many had none (such as complaints about a solicitor, an estate agent and kitchen fitting company).

Case example

A woman emailed about a leak in the water main opposite her house, which was not only wasting water but making the water pressure in her home very low. I advised her about how to make a complaint to a water company, and told her that information about relevant standards (including regarding water pressure) were available on OFWAT's website. She emailed back to let me thank me and let me know that mentioning her pressure problem had resulted in the leak being fixed the following day.

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.

Case example

A man wrote to me wanting information about the different rights of pedestrians and cyclists on a towpath in London. He felt that some cyclists were a danger to him when he was walking. I provided him with some information from the Waterscape website about cycling on towpaths, and explained how to contact British Waterways if he required more information or wished to complain. He wrote back to thank me.

However most of these enquiries are from people (though one purported to be from a dog) with a grievance about the actions of British Waterways, but who approach me prematurely. 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.

The complaints in Group B covered a wide range of issues, including moorings, administration of fees, weed in the canal, enforcement action (both from those against whom it is taken and those who believe it should be taken against others), entry to land, handling of health and safety issues, cycling, angling.

Group C

These were complaints about British Waterways, which were put to me too late or where the subject matter was not in my jurisdiction.

Summaries of decisions on all eligible cases

Index of cases

- Case No 13 – failure to remedy adequately a complaint about allocation of moorings and charging for ‘breasting up’ a boat
- Case No 14 – handling of a project involving a contract with the complainant’s company
- Case No 18 – lease of a marina by British Waterways and involvement of BWML director
- Case No 21 – policy and practice on freight, removal of the complainant’s craft and handling of freight enquiries
- Case No 25 – mooring, following piling works, opposite the complainant’s home and complaint handling
- Case No 41 – regard to views and needs of residents when managing water flows and complaint handling
- Case No 55 – repairs at moorings and issue of houseboat certificate
- Case No 70 – management of moorings
- Case No 90 – level of insurance cover required
- Case No 91 – mooring, following piling works, opposite the complainant’s home and complaint handling
- Cases No 100, 103, 105, 108 – charges for moorings and complaint handling
- Case No 101 – lack of consultation over proposed changes to a bridge
- Case No 103 – see case no 100
- Case No 105 – see case no 100
- Case No 107 – licence charge on a disconnected canal
- Case No 108 – see case no 100
- Case No 123 – restriction of vehicular access on towpath affecting complainant’s home
- Case No 131 – maintenance of a mooring
- Case No 134 – mooring charges for ‘end of garden’ mooring
- Case No 138 – consideration of request for permission to moor boat
- Case No 170 – neighbour’s concerns about management of moorings
- Case No 171 – refusal to allow continued use of a BWML caravan site long term and discrimination
- Case No 174 – adequacy of measures to keep sufficient water in the canal
- Case No 175 - sale of neighbouring land, effects of that and handling of matters
- Case No 192 – increased electricity and pump out charges

Summaries of decisions on completed cases

This section provides a summary of my decisions on the 25 complaints on which I reported this year. It does not include details of the complaint (Case No 22) which was withdrawn after a complex and lengthy investigation was nearly complete, following negotiation of a settlement between British Waterways and the complainant.

Case No 13 – failure to remedy adequately a complaint about allocation of moorings and charging for ‘breasting up’ a boat.

1. Mr and Mrs A, who lived on their boats with their family, had complained to British Waterways about how moorings were allocated, especially the handling of a request for an additional mooring for an extra boat to be occupied by one of the family. British Waterways’ own investigation found that they had some justified concerns and paid some legal costs incurred. Mr and Mrs A complained to me that their claim for compensation had not been properly considered. Some of Mr and Mrs A’s comments suggested that they believed that British Waterways had a duty to provide an additional, adjacent, mooring for the family. I did not think they had. In fact British Waterways did agree initially that the extra boat could moor temporarily for one year, and later allowed the boat to remain long term. I could not see any grounds for me to feel Mr and Mrs A should be paid the substantial compensation which was claimed for loss of earnings and the effect on their health.
2. However there did seem to have been a delay of about seven weeks in telling Mr and Mrs A about a change in policy affecting the site, which ultimately led to the extra boat being allowed to remain after the initial year. They had not received any compensation for the additional, unnecessary worry caused by the delay. In my view a small amount was due to the family in respect of that. I upheld the complaint to that extent and **recommended** that British Waterways should pay Mr and Mrs A £140.
3. Mr and Mrs A had one of their boats breasted up with another. They felt that a lower mooring charge should be made. British Waterways said that they had discussed the issue of charges for breasted up boats and decided that they should be charged at the same rate as single boats. Essentially policy matters are for British Waterways to decide. I had seen no evidence either that British Waterways had not given reasonable consideration to the matter or that the policy and its implementation were so patently unfair that I should pursue the matter further. I did not uphold that aspect of the complaint.

Case No 14 – handling of a project involving a contract with the complainant’s company

1. Mr B was the managing director of a company which had a contract with British Waterways for work on a particular project. The possibility of his company and British Waterways also working together in a joint venture was discussed but never formally agreed. During the course of the contract the company experienced financial problems and eventually went into administration. Mr B complained that the project was badly managed by British Waterways - which he believed led to its failure and that of his company. He complained about various other aspects of how British Waterways handled matters with him and his company.
2. I found that there was maladministration by British Waterways in the way the project was set up: but Mr B had been a party to significant elements of that. In the end this was a contractual relationship made between two willing parties, and there had been no suggestion that British Waterways had acted in breach of the contract.

3. I did also find maladministration in a delay in British Waterways telling Mr B that they did not intend to proceed with a joint venture on any matters. However I had not seen any evidence to suggest that that substantially affected the outcome for Mr B or his company. I did say that, when contracting with much smaller organisations like Mr B's company, British Waterways may need to take special care not to abuse their much stronger position. I would have criticised them, and held them to account for the effects on Mr B and his company if, for example, I had found evidence that they had acted in bad faith or deliberately set out to harm his company's interests. But I had not found evidence of any significant failings of that sort. In all the circumstances, I could not see that it would be right to hold British Waterways responsible for the consequences of the project's failure on Mr B or his company, as well as the consequences to themselves.

Case No 18 – lease of a marina by British Waterways and involvement of BWML director

1. The complainants' company was assigned a lease of a marina owned by British Waterways. A condition of the assignment was that certain repairs were to be carried out in six months. British Waterways engaged in discussions about possible investment in a redevelopment the company planned for the site, but subsequently decided not to go ahead, and then resisted an application for renewal of the lease. The company complained that British Waterways were not sufficiently open with them, between 2001 and 2004, about their true intentions and misled them to believe that they were interested in investing in the re-development, leading to them spending significant amounts of time and money fruitlessly. They also complained that British Waterways had not handled properly conflicts of interest within the organisation, between its role as their landlord and its ownership of BWML which was in competition with them. In particular, they said that an employee of British Waterways (Mr C), who was also a director of BWML, was inappropriately involved both with decisions about their lease and possible development plans. They also complained about the handling of the complaint.
2. Whilst clearly the complainants devoted significant effort to pursuing the possibility of British Waterways helping to fund a redevelopment, so did British Waterways - seeking an assessment of a rent for a new lease which formed part of the development package, and putting a detailed case in favour of supporting the development to their Commercial Development Group (CDG). All this seemed to me to provide strong evidence that British Waterways were genuinely giving very serious consideration to working with the company to support redevelopment of the site. However ultimately the CDG decided not to go ahead.
3. I did take note of the fact that after the decision not to fund the development, in response to legal notices served by the company, British Waterways resisted granting a further lease to them and gave as one ground that they wanted the site for their own use. But I also noted that apparently they had not pressed for a court decision on their entitlement to that, and had had further discussions about the possibility of the company keeping the site and improving it. That seemed to provide evidence to support their account that their main concern was to see the site improved, rather than to remove it from the company. I saw no evidence that British Waterways had plans to take the marina into BWML as the complainants feared.
4. I found it impossible to reconcile much of the differing accounts given by one of the complainants and Mr C of a visit he paid to the marina. I did not see any evidence that Mr C's involvement acted against the complainants' interests: the decision by British Waterways not to fund the redevelopment had been taken more than a year earlier so Mr C's involvement certainly did not influence that. Mr C had a legitimate interest in the site in his role for British Waterways.

If anything, the prospects of the company getting the new lease they wanted seem to have improved slightly following Mr C's involvement. As I saw no evidence of any practical injustice to the company as a result of Mr C's involvement, I did not uphold that part of the complaint.

5. I did however make some comments about the relationship between BWML and British Waterways. Whilst BWML is wholly-owned by British Waterways, links at some level will inevitably remain. That in itself is not evidence of maladministration. The only way links could be avoided would be for British Waterways not to have a subsidiary such as BWML. I was not aware of any reason why British Waterways might not set up a wholly-owned subsidiary trading company - as a number of public bodies do - to help finance their work, so long as they did that properly. However because British Waterways are a public sector body, holding land on behalf of the nation and with certain statutory responsibilities, they need to be specially careful about how they use the power which that gives them. That is particularly crucial in respect of the behaviour of staff (especially any with responsibilities within both organisations) and the handling of commercially sensitive information, in relation to matters where their own subsidiary is competing with independent marinas. There was little about that in the then Marinas protocol and I could see that greater clarity on this could be very helpful in reducing the risk of maladministration. During the investigation, British Waterways both commissioned consultants to review their practices and procedures in this area and started work on developing a Code of Practice for staff involved in marina and moorings management. I hoped that those would be of benefit.
6. My main concern about the handling of the complaint was the defence, in the response, of the adequacy of the administration, based on the quality and quantity of documentation. I found it hard to see how such a conclusion could properly be reached in a case where a key file had been lost, a number of significant papers were no longer held by British Waterways and when the problem with the file had not been disclosed to the complainant. That did seem to me to be evidence of maladministration in the handling of the complaint and it would necessarily cause an injustice. I upheld this aspect of the complaint to that extent.

Case No 21 – policy and practice on freight, removal of the complainant's craft and handling of freight enquiries

1. The complainant owned a number of freight vessels. He had complained in 2004 about several matters relating to British Waterways' policy and practice regarding freight. I could give no general view as to British Waterways' compliance with government policy regarding freight or whether it was meeting its statutory obligations to maintain the relevant part of the waterways, in the rather general way the complainant wished. However I could consider whether any injustice had been caused to him by maladministration. I could see no grounds to conclude that he had suffered in that way on the basis of some rather more specific allegations he made.
2. The complainant expressed another part of his complaint in terms of an alleged breach of the Competition Act 1998. I could not see that it would be appropriate for me to express any view as to the lawfulness of British Waterways' actions in respect of compliance with that legislation. There appeared to be a much more appropriate route available to a remedy if British Waterways were in breach of competition legislation - by way of a complaint to the Office of Fair Trading. What I did do was to consider whether there was evidence of maladministration or unfairness in respect of the particular allegations made. Those related

to the treatment of craft belonging to private contractors regarding moorings and licences, movement of some dredgings by British Waterways and the award of a freight contract under their control.

3. I could see no grounds for me to regard British Waterways moving their own dredgings with their own craft (whether or not their vessels required licences or registration) as evidence of maladministration or unfairness. In respect of the contract my investigation showed that, contrary to the complainant's allegation, a limited tendering exercise was in fact carried out and British Waterways provided information about why he was not one of those invited to tender. Again I did not see evidence of maladministration or unfairness in these matters causing injustice to the complainant.
4. Some of the complainant's vessels were moved by British Waterways under S8 of the Waterways Act 1983, because they said it was necessary to clear the area because of re-development proposals. I agreed broadly with provisional views which my predecessor had expressed, when he questioned why, if the reason for their removal was to give vacant possession to developers, the vessels needed to be moved over three years before vacant possession was required. However, by the time of my decision, moving them back was no longer an option as the site had since been handed over to the developers. However British Waterways seemed likely to have been entitled to remove them in any event if, as seemed to be the case, they were not properly registered. On that basis I saw no significant injustice to the complainant and did not uphold this aspect of the complaint.
5. I did not uphold a complaint that enquiries about potential freight traffics had not been passed on to the complainant. That did not seem to be because of maladministration, but because the complainant had not responded when British Waterways had enquired if he would like his name included in a list of freight carriers which was sent to enquirers.

Case No 25 – mooring, following piling works, opposite the complainant's home and complaint handling

1. Mr D complained that:

- British Waterways wrongly failed to consult him and his partner about plans for piling works to the bank of the canal opposite the garden of their home;
- British Waterways had given inadequate consideration to the effects of the removal of the reed beds and the consequent loss of privacy and nuisance to him and his partner caused by boaters mooring immediately opposite their garden. Although in response to his complaint they had offered to replant a reed bed, they had also proposed an associated mooring in a position which would make the situation even more unbearable and been unwilling to consider an alternative proposal from Mr D.
- the handling of his complaint was inadequate.

One of his neighbours made a separate similar complaint – case No 91.

2. British Waterways had accepted that, contrary to their Environmental Code of Practice (ECP), they had failed to consider notifying neighbours of the proposed works. However despite a suggestion in an internal email that a 'generic' ECP form had been completed, the documentation I obtained provided no evidence that the ECP regarding piling at this site was ever considered in any way: no effort at all seems to have been made to complete the required form. That significant failure was maladministration: which was not adequately acknowledged or dealt

with under the internal complaints procedure, when the only failing acknowledged regarding the ECP was that of not considering whether to notify neighbours.

3. Having said that, I had to consider what difference that maladministration have made. I could see that (if the complainants had been consulted and had the chance to make their views known, and the ECP had been properly considered) British Waterways would probably have replanted reeds sooner than would result from some offers already made. However whilst I accepted fully that Mr D and his partner had found the effect of the changes made to the canal bank extremely distressing, I could not expect British Waterways to let that override all other considerations. Other than objections of those living opposite, I was not aware of any reason why British Waterways would wish to prevent mooring at that point. If moorers behaved badly (as had been reported by Mr D) that was essentially the responsibility of the moorers, not British Waterways, so long as British Waterways were making reasonable efforts to deal with any reported breaches of bye-laws or anti-social behaviour.
4. However I would expect British Waterways to behave like a good neighbour. They had already offered (in July 2005) to take action, in response to Mr D's concerns, in order to deter boaters from mooring immediately opposite his home: by planting reeds there and placing mooring rings further along the canal. However Mr D feared that the mooring rings would be counterproductive and rejected that plan. British Waterways indicated that they would like to develop moorings further away (in a similar area to one proposed by Mr D) but did not have funding for that before winter 2006-07. The practical actions offered already seemed to me to be reasonable ones. If Mr D and his neighbours preferred to wait for reeds to be planted until 2006-07 (when a new mooring site could be developed further away) rather than to have them planted much sooner and have temporary mooring rings placed rather nearer to their homes, then that was their choice. I could see that to plant reeds without any alternative local moorings could well be fruitless.
5. It seemed to me that the main outstanding injustice resulting from the maladministration I had identified was a potential delay in identifying and resolving the issues. This delay seemed to me to run from the time when the work was done to the point when action could have been taken under the offer made in July 2005. I felt that some compensation for distress was due to the complainant and that British Waterways should make a contribution to some of the expenses of pursuing the complaint and the effort involved, especially when the full fault was not admitted initially.
6. I **recommended** that British Waterways should:
 - pay Mr D £1,000 (approximately £50 per month) for the distress and inconvenience caused by the delay in identifying and resolving the issues, and a further £250 towards the effort and expense of pursuing the complaint.
 - reiterate one more time their previous offer to develop an alternative mooring in winter 2006-07 and to plant reeds opposite the houses in the complainant's road. They should then also confirm that they would make suitable provision for protecting the reeds until they become re-established. Suitable work should go ahead expeditiously;
 - audit compliance with the ECP, especially completion of the ECP forms, to ascertain whether the failure in this case was an isolated incident or whether it was symptomatic of a wider problem. They should provide me with a copy of a report on the audit.

7. British Waterways had already accepted and apologised for some failings in complaints handling, but I identified some further points which caused me concern and injustice to Mr D and his partner. I **recommended** that British Waterways should apologise again for the remaining problems in the handling of the complaint and consider how best to learn from them in future.

Case No 41 – regard to views and needs of residents when managing water flows and complaint handling

1. Residents living in buildings immediately adjacent to a canal, millstream and millpond complained that British Waterways had taken inadequate regard of their views and needs and the effects on them, their properties and riparian rights when managing water flows in their area. They said that in the summer of 2005 the flow of water in the stream died up and the pond became stagnant. They feared that lack of water around the foundations of their homes would cause structural damage and believed British Waterways were responsible. They also complained that British Waterways had failed to handle their concerns and complaints adequately.
2. There was a conflict of view between the residents and British Waterways about the legal position. The residents believed they had a right for the flow of water in the millstream not to be interfered with by any actions by British Waterways. British Waterways said their powers to use water to maintain the canal meant that they could do so even if it meant the mill stream ran dry. However that was a complex legal matter and, as I explained to the residents from the start, I could not give a definitive view on the point. Only the Courts could do that. Having said that, I would expect British Waterways (as a public body) to be a good neighbour.
3. The water situation in the area was complex. The residents felt that British Waterways should have taken more action to keep water in the mill pond. I was not in a position to make a firm judgement as to the merits of the approach taken by British Waterways as opposed to that desired by the residents, and so I made no firm finding on that matter.
4. I upheld the residents' complaint about how their concerns and complaints had been handled. Despite being made various promises of a response to their concerns, four months after they had first written they had still not had a detailed response and were little further forward. Incorrect factual information was given about operation of sluices and confusing information was given about the position regarding the complaints procedure and never properly corrected. The director finally provided a quite detailed response to the concerns, after paying a site visit, but did not address concerns raised about the handling of matters. I **recommended** that British Waterways should nominate a suitable named member of staff to liaise with residents in future. That person should inform a nominated resident of proposed activity by British Waterways which might significantly affect the flow of water around the mill (e.g. operation of the sluice gates) and should act as a focal point for residents to use when they wish to make representations to British Waterways. I said that as a first step in this process British Waterways should arrange a meeting with residents:
 - to introduce the liaison officer and agree detailed liaison arrangements;
 - to explain in more detail their understanding of the water flows in the area and their views on how best to manage them;
 - to listen to residents' views.

Case No 55 – repairs at moorings and issue of houseboat certificate

1. The complainant raised various issues relating to repairs and maintenance at his mooring.

Some had already been covered in a previous Ombudsman's investigation and some repairs had recently been carried out. I declined to pursue those matters. I did pursue implementation of a recommendation made in the previous investigation and, after some significant delay, the work recommended then was eventually completed satisfactorily.

2. The complainant also raised some issues relating to his houseboat certificate. Whilst some aspects clearly had completed the complaints procedure, it was a debateable point whether another aspect had. Some aspects related to disputed points of law which would it would not be appropriate for me to attempt to determine. However I was able to obtain for the complainant further information and an assurance from British Waterways about their views on one crucial point for him and he agreed that I should treat this part of his complaint as resolved.

Case No 70 – management of moorings

1. Mr E complained that British Waterways had failed to get a trailer, which was obstructing part of the car park for his mooring, removed, and agreed in writing a line of a fence to be erected on the mooring and then without consultation altered the line to a position none of the boaters wanted.
2. British Waterways said that efforts were made to have the trailer removed, and I did not doubt that – partly because the trailer was removed, twice. However the lack of any written records made it impossible for me to tell whether there was delay amounting to maladministration in acting on Mr E's concerns and I made no finding on the question of delay. However I did regard as maladministration the lack of any records and criticised British Waterways for that. I also regarded as maladministration the Director's failure, at stage 2 of the complaints procedure, to respond to the specific question of the trailer. I **recommended** that British Waterways should review their record keeping of the handling of customer enquiries (and actions taken in response to those), and make sure adequate written (or computer) records were maintained.
3. Having visited the site I could see no significant practical disadvantage to the moorers from having the fence posts in their current position rather than that which they had previously agreed. If the original decision had been to put the posts where they were in fact placed, I could not see that the moorers would have had grounds to complain of maladministration or injustice.
4. The fence had been intended as a solution, acceptable to all, to issues relating to a farmer's use of the track to take stock through the mooring. There had been considerable tension between those involved, over various matters, for some time. British Waterways had accepted that there was a failing in their handling of the matter, in that a site meeting to discuss the arrangements for the fence was inadequate. They had apologised for that and explained why they did not now believe it was right to adhere to the original plan. Mr E felt that British Waterways should be made to honour their original written commitment. Generally of course, such commitments should be adhered to, but they can be given in error and circumstances can change. If commitments are made in error and someone acts to their detriment as a result, recompense may be owed. It was impossible to tell what the outcome would have been if the problems later identified with the planned position had been recognised earlier, but it seemed to me that British Waterways might well have gone ahead on the eventual line. I could therefore see no basis for me to insist the posts must be removed or replaced where initially planned, nor could I see that Mr E acted to his detriment as a result of expecting the posts to be placed in a slightly different position.

5. However I did have an outstanding concern. What had been lacking from correspondence from British Waterways was any written recognition of how annoying and frustrating the change of plans must have been for Mr E. I regarded that failing as maladministration causing injustice to Mr E. I **recommended** that British Waterways should apologise to Mr E for the upset and frustration caused by the change of plans regarding the fence.

Case No 90 – level of insurance cover required

1. Mr F complained about issues connected with British Waterways' refusal to allow him to move a boat through Docklands in 2005 because, they said, there was inadequate salvage cover in his insurance policy. They had already apologised for their part in the problem not being identified earlier in his journey, and for having mistakenly allowed him on one previous occasion to enter using the same policy (he said this had happened more than once, with different boats). I pointed out that that did not mean they were obliged to accept it again. It seemed to me that they were entitled to refuse entry to vessels without adequate cover and that, whilst it was not for me to say exactly what cover was needed, I could see why they might reasonably expect more than the £10,000 of salvage cover in Mr F's policy and I felt that he was in a position to realise his cover might not be adequate.
2. Mr F wanted British Waterways to give a statement about the minimum cover required. However he visited Docklands with a number of different vessels at different times, and I could appreciate why British Waterways might not be able to give a general figure for a vessel of a particular length, which he had sought. I did not uphold the complaint.

Case No 91 – mooring, following piling works, opposite the complainant's home and complaint handling

1. This complaint was made by Mrs G, a neighbour of the complainant in case no 25. The complaint and my decision were substantively the same as in that case, and I will not repeat the details.
2. However Mrs G raised a different issue regarding the handling of her complaint. She did not receive a timely response to her original complaint and when she expressed concern she was told that one had been sent and must have gone astray. She was told that there had been the same problem with another letter sent at the same time and that the matter had been reported to Royal Mail. But when she contacted Royal Mail they said they had no record of a complaint from British Waterways. In response to my enquiries, British Waterways said they had made informal enquiries but did not lodge a formal complaint after being told that normal mail could not be traced.
3. I could see no realistic prospect of me being able to establish what happened regarding the missing letter, but could understand why Mrs G would have expected, from what she was told, that a formal complaint had been made. I found that Royal Mail had a simple form on which to report details of missing mail available on their website. Especially when more than one item was apparently missing and a customer was expressing concern, I think that good administrative practice would have been to use that - even if the letters could not be traced. So to that extent I thought that there was maladministration by British Waterways, which caused unnecessary concern to the complainant. I **recommended** that British Waterways should apologise for the upset the handling of this matter caused and, if there is any evidence of further problems of mail posted from the same office going astray, ensure it is formally reported to Royal Mail.

Cases No 100, 103, 105, 108 – charges for moorings and complaint handling

1. Four sets of moorers at the same marina complained separately that in 2006 British Waterways changed the pricing arrangements at the marina, from a charge per metre to a charge per berth, without following proper procedures or considering the matter properly. Two of the sets of moorers also complained about how their complaints had been handled.
2. I could only consider questions of maladministration or unfairness. That charges have increased or been put on a different basis is not in itself evidence of either maladministration or unfairness. What I could consider was the process followed - especially whether British Waterways had adhered to their own policy and procedures. One of the issues raised in the course of the complaint was the profitability of the marina. First, whilst I found it rather surprising that the pricing policy did not refer explicitly to profitability as a relevant factor in the pricing process, I could not see that it would be maladministration for British Waterways to be influenced by finding that the marina was making a loss. Any business would wish to take that into account. Furthermore to allow a marina to function in that way long term was likely to be unfair to competing independent marina operators. I suggested that British Waterways might wish to make explicit in their pricing policy that financial viability of marinas will be a factor.
3. I could also understand why the idea of charging per berth arose, given the layout of the marina and the underutilisation of some of the pontoon space. Again I saw no grounds to criticise British Waterways for that: any business would be likely to want to make such a move. As they said, there were other previous examples where charging per berth was used. I could not see that it was a national issue requiring national consultation.
4. British Waterways seemed broadly to have followed their own guidance in comparing this with other local sites and considering issues such as waiting lists, to arrive at a comparable price per metre which they then converted to a price per berth - assuming that the larger berths could be used by 17 metre boats. Moving to a per berth charging rate would inevitably mean significant price rises for smaller boats moored on larger pontoons. I was concerned about how the idea of moving to such a mechanism was handled. The director involved had already accepted that the process was insufficiently consultative. I agreed. In referring to 'proposals' the pricing policy led to an expectation that no firm decision had yet been made and that views of moorers could still influence matters. The way things were done here was to present the overall changes as a firm decision and to offer only an opportunity to discuss queries. Not only that but, as the director pointed out, moorers were not even told initially of the availability of phasing in of the increased charges. The policy seemed to me to describe something halfway between a consultation and a notification. Whilst the prices set initially were described as proposals, those went ahead unless customers come back with very good reasons why not. I thought it did inevitably run the risk of the moorers expecting more of a consultation and staff treating it more as a notification: as happened here. I encouraged British Waterways to consider whether the policy and guidance could be improved to reduce that risk.
5. One other concern was what consideration staff gave and what information was provided to moorers about transitional arrangements - given the significance of the changes being proposed. Any owner of a small boat on a large pontoon was almost certain to wish to move. If British Waterways really were committed to customer service they should also want to maintain a good relationship with these customers by offering alternative services. Staff told me that whilst no existing shorter pontoon spaces were vacant, they did have plans to offer some such moorers the chance to relocate: but they had made no real effort to tell moorers that.

6. I could see why, when an initial letter from one of the complainants' giving his views was put straight into the complaints procedure rather than being handled as comments on a consultation, it only confirmed to him that in practice the pricing process was not consultative. The guidance for managers was quite clear, rightly, that the complaints procedure was an option following the consultative process.
7. In sum, I agreed with the director that the process was insufficiently consultative and that moorers were not given enough information at the start. But, when I had not found significant maladministration beyond that already accepted by British Waterways, that deserved no further criticism. However I upheld the complaint to the extent that it had not yet been adequately remedied. I **recommended** that British Waterways write to all moorers at the marina affected by the change and describe what help they might be able to give to those who wish to move to a less expensive berth. I also **recommended** that they should follow through on what had already been offered and invite moorers to provide further comments at a meeting (or in writing) and reconsider their proposed prices in the light of those (and previous) comments, before notifying moorers of their final decision. I also found that there was maladministration in the way concerns from two of the complainants were handled, and said I expected that any necessary action would be taken to ensure that such problems did not recur.

Case No 101 – lack of consultation over proposed changes to a bridge

1. The complainant was a boater living close to the site of the former Long Horse Bridge, which went across the river Trent near its confluence with the River Derwent and the Trent and Mersey canal. In 2003 the concrete footbridge was demolished, and British Waterways were obliged to provide a replacement, as the bridge had carried a public footpath. Planning permission was obtained in 2005 to build a multi-user bridge, suitable for cyclists and horseriders, but 140 metres upstream of the previous bridge, in a bowstring design and 3.9 metres wide. The complainant said that there was wrongly no consultation over the proposed significant changes to the bridge before firm plans were announced, and that the changes were unacceptable and not justified.
2. The new bridge was to be a joint venture between British Waterways and the County Council. The Council were keen to have a wider bridge than British Waterways were obliged to provide and were therefore prepared to contribute part of the cost for such a bridge. To save money it was decided that the bridge should be built 140 metres away from the previous site, where the river is significantly narrower. It was not maladministration for British Waterways to seek to work with the Council as they did, or to take into account costs when considering the design and siting of the bridge.
3. British Waterways pointed out that the plans for the bridge were discussed at user group meetings. The complainant did not believe that what was done was adequate: the plans were quite firm by the time of a crucial meeting in February 2005 and he questioned whether as much information was given there as British Waterways said. I was rather concerned about the statement at an earlier meeting that the Council would be the future point of contact for all future works. Even if the Council had built the bridge (as was then intended), British Waterways (and their users) would retain a particular interest in the design etc being suitable from a waterways perspective: whereas the Council had interests from planning and footpaths perspectives.

4. I was also uneasy about a comment made to me by British Waterways about the planning application offering the normal opportunity for democratic input. In one sense that was correct, but I would be very concerned if British Waterways expected that to provide the opportunity for all views to be taken into account. Only material planning considerations can be taken into account when a planning application is determined: there would certainly be other issues which waterways users might reasonably raise which could not be taken into account in that process. British Waterways, if it wished to ensure views of users were fully considered, would still have needed to make other arrangements. However, in fact, there was some consultation by British Waterways in that the issue was discussed at the February 2005 user group meeting. By then plans had changed significantly. Apparently because of changes in what the Council could do, British Waterways were now to design and build the bridge and it was to be sited 140 metres upstream.
5. British Waterways' policy on local consultations did not require any form of consultation beyond that at user group meetings. They did broadly follow their policy. However there was a dispute about how much information was given at the February 2005 meeting. Nevertheless the evidence before me was sufficient to convince me that, at the very least, it was mentioned that plans for the bridge had changed and it was now to be upstream of its previous position. Information about its design and the distance from the old bridge was given in the notes of the meeting, which were circulated in early April 2005 - before the application was made for planning permission. So by then members of the user group would have been alerted to the significant changes: in time for them to make any enquiries and representations they wished to British Waterways before the planning application was submitted. So, even if full details were not given at the user group meeting, I could not see that that would be likely to have made a significant difference to the outcome. Therefore I did not uphold the complaint.

Case No 103 – see case no 100

Case No 105 – see case no 100

Case No 107 – licence charge on a disconnected canal

1. The complainant was concerned at an increase in his licence fee in 2006-07 for his boat on a disconnected canal. He felt that the reduction offered on the normal licence fee should be more than 25%, especially given the standard of maintenance.
2. Whilst I had some sympathy for the complainant's argument that the cost per mile of available canal was much higher than for most boaters, I could not see that there was another obvious method of setting the charge which would necessarily generally be accepted as fairer. Nor had I seen any evidence of maladministration in the way consultations had been carried out on the decision to move to a 25% reduction. I did not uphold the complaint.

Case No 108 – see case no 100

Case No 123 – restriction of vehicular access on towpath affecting complainant's home

1. Mrs H owns a house where the only vehicular access is across a bridge owned by British Waterways and along a towpath by a disused section of canal. A weight limit has been in force on the bridge for some time. In 2005 British Waterways told residents of houses along the towpath of their intention to install bollards to prevent larger vehicles using the towpath, because of concerns about the stability of the banking. Mrs H complained that British Waterways

had not given proper consideration to the effects on her and her family when deciding to restrict vehicular access.

2. Mrs H believed that she had a legal right to have access for vehicles over the bridge and along the towpath (uninterrupted by bollards) and that if repairs were needed to the towpath and canal wall to make that safe for larger vehicles then British Waterways were under an obligation to carry out the repairs. British Waterways disagreed. It appeared that British Waterways had gone about considering the legal situation in a generally reasonable way and I could see no grounds for me to judge that maladministration had led them to reach the wrong conclusion. If Mrs H wished to establish that she had a formal legal right to use the towpath unhindered by bollards, or to insist that British Waterways carry out major repairs, then she would be well advised to take legal advice on the possibility of Court action being successful.
3. Whilst I could appreciate that the installation of the bollards might be a considerable inconvenience to Mrs H, that faded into insignificance against a risk of death or serious injury if a vehicle slipped into the canal because the weakened wall collapsed. Very large or heavy vehicles should not have used the bridge in any event: with or without bollards on the towpath. Mrs H was aware of that when she bought the house. My enquiries also showed that British Waterways had:
 - consulted residents about the issue;
 - tried to find a solution which would allow vehicular access for residents' cars without unduly endangering them or others;
 - agreed to do some works to support the canal wall (despite their view that they have no repairing obligation);
 - changed their plans to try to reduce the impact on residents - in particular in agreeing that the bollards should permit slightly wider vehicles than originally intended.
4. In sum, whilst I could appreciate how inconvenient a restriction on vehicular access would be to Mrs H, I could not see that it was the result of maladministration by British Waterways or that they had failed to give proper consideration to the effects on her family. The only failing I identified with an adverse effect on Mrs H, was in the apparent withdrawal of a helpful offer of assistance in sourcing coal and septic tank disposal. I **recommended** that local staff continue their efforts to liaise with Mrs H (and other affected residents) about arrangements for access along the towpath. In particular they should follow through on their offer of help in sourcing coal and septic tank services and clarify the position regarding emergency services.

Case No 131 – maintenance of a mooring

1. Mr and Mrs J complained that British Waterways had failed to maintain their mooring adequately and failed to respond adequately to the concerns they had expressed about that since 2005.
2. From photographs I saw, I had no difficulty in understanding why Mr and Mrs J reasonably became concerned about the state of the mooring. To go from a situation where the land was maintained like a lawned garden to one where it looked more like an abandoned field, containing occasional items of discarded furniture, would cause almost anyone concern. I could accept that weekly mowing was no longer possible: but when moorers had no explanation about what standard of grounds maintenance to expect, any such change was almost bound to result in complaints. Whilst I could accept that the large items of rubbish may have been left by some moorers, the complainants had a reasonable expectation that action would be taken by British Waterways if other people behaved in such an anti-social way.

3. Some of the matters originally raised did seem to have been resolved during the main 2006 season, but it was disappointing to hear that there was apparently a problem again in some areas in late September. On some items British Waterways seemed to have taken a considered decision not to act: I saw no evidence of maladministration and therefore could not take those points further. Plans seemed to be in hand to deal with other matters. I was surprised to find that a health and safety adviser's assessment was not documented: and this was subsequently remedied in the light of remarks I made in my draft report. I hoped that lessons had been learned for the future.
4. In response to the concerns at least the largest pothole in the car park was filled in, and more filling was promised. It seemed clear that to achieve a significantly better result, more substantial drainage and resurfacing work would be needed. British Waterways initially said that they were planning a capital project to include that. However later they said that the capital works had not been progressed because of discussions about the possibility of moorers leasing the site. It was not for me to determine the priority British Waterways should give to major improvement works, but if capital works were not to go ahead British Waterways needed to ensure that interim measures were in place to make sure the car park was maintained to a reasonable standard.
5. Vegetation management had remained an issue. The contracts in place for 2005 and most of 2006 simply did not require the same level of maintenance as previously. Even after Mr J's complaint in 2005, it appeared that inadequate efforts were made in 2006 to enforce the terms of the grass cutting contract. Although British Waterways told Mr J in July that by 13 July 2006 the grass had been cut three times (as the specification required), that did not appear to be the case from the documentary evidence they provided to me. By that point three cuts should have been done but only two had been and the first was significantly late. Very simple management systems should have enabled the failure by contractors to comply with the specification to be identified and tackled: but it seems that either those were not present or failed. One might have expected particular care to have been taken, given complaints events the previous year but that was not the case. Matters were compounded when inaccurate information was later given to Mr J. I criticised British Waterways for their failings in these regards and upheld Mr and Mrs J's complaint in this respect.
6. Some action was in hand (or had been deemed unnecessary) on all the main issues raised by Mr and Mrs J. However I was also concerned by how long all this had taken. I **recommended** that British Waterways should:
 - A. check for and remedy promptly any current problems with the rubbish collection and cesspit emptying. They should also check whether a replacement mooring ring was required for one Mr J reported as missing and inform him promptly of their intentions;
 - B. ensure that the safety ladders were installed as promised by the end of November;
 - C. review their arrangements for monitoring compliance with and enforcement of the grass cutting / maintenance contract to ensure that in future specified maintenance does take place (unless there were good reasons to vary the requirement);
 - D. make a small refund to all moorers (who paid for moorings there for the period April to July 2006). They should receive £75, with Mr and Mrs J receiving an additional £25 in recognition of the trouble taken in pursuing the complaint.

Case No 134 – mooring charges for ‘end of garden’ mooring

1. Mr K moors his boat alongside land which neither he nor British Waterways own. Mr K complained that British Waterways did not give proper consideration to setting the mooring charge, and in particular wrongly based it on a comparison with another mooring with more facilities.
2. Mr K questioned whether the usual approach of making comparisons with other sites was a fair one, as there were anomalies, it was open to abuse and could produce rises above the cost of living. I could see that British Waterways needed to ensure that they were setting a fair market rate for moorings. Some form of assessment of the market, including comparing prices at a range of competing sites, was therefore likely to be needed. At a time when moorings are in quite short supply, that might lead to prices rising above the cost of living. So I could see no grounds to criticise British Waterways’ approach of comparing prices at similar sites.
3. The mooring fee charged for such ‘end of garden’ moorings is in effect a rental for the use of the part of the canal in which the boat is moored. There are various different ways in which a price could be set for such a mooring, but the method chosen by British Waterways (of charging half the price of a comparable site where the rent also includes land access) did not seem to me to be an unreasonable one. But the choice of a fair comparator site will not always be easy, particularly in assessing the difference in facilities and the similarity of environments. Mr K questioned the choice of one comparator site because it had more facilities than his. But I noted that a 15% reduction had been made in respect of that. On balance then, having considered all the arguments, I accepted that it was reasonable to use the comparator mooring once the reduction had been made. Therefore I did not uphold the complaint.

Case No 138 – consideration of request for permission to moor boat

1. In 2005 Mr L bought a house close to a canal. Between his house and the off-side of the canal are a path, a fence and then a grassy bank. The bank is owned by British Waterways. The previous owner had an arrangement with British Waterways to rent part of the bank as a garden and moor a boat on the canal at the bottom of the bank. Mr L complained that British Waterways had not given proper consideration to his request for permission to moor his boat in the same site.
2. Since at least 2000 there had been a conservation policy against the development of moorings on that side of the canal. The policy said nothing either way about allowing existing moorings to continue. It was clear to me that Mr L had no legal right to take over either the tenancy of the land or use of the mooring. If his expectation of that was crucial to him, I would have expected him or his solicitor to check on the position with British Waterways before the house purchase. Having said that, I still needed to consider whether British Waterways considered his request in a reasonable way. It seemed that the main reason for the initial refusal was British Waterways’ concern about the stability of the bank.
3. However by the time Mr L was pressing the point, a working group was considering future practice on off-side moorings on the canal and decided that the conservation policy should be applied more rigorously. They put a stop to any new off-side moorings but decided that existing end of garden moorings could still be renewed, even where there was a change of

owner 'except where there were specific reasons for not doing so'. British Waterways still felt that their concern about the bank stability was a reason why a mooring should not be permitted. At least one other similar request along that road was refused for the same reason.

4. I could understand why Mr L was concerned by what appeared to him to be inconsistency in decision making, and enquired about other cases he quoted. Having done that I could see that the decisions in question were all effectively taken before the group's decision to apply the conservation policy more rigorously. I could not see that the other decisions were out of line with practice and the way the policy was applied at the time.
5. That left the fundamental point of Mr L's disagreement with British Waterways about the stability of the bank. The decision on the possibility of a mooring hinged on that. As I explained to Mr L from the start, I could not give a determination about the stability of the bank. Whilst I could see some ways in which matters might have been handled a little better (as British Waterways had already acknowledged), I did not see evidence that maladministration or unfairness has resulted in Mr L losing the opportunity to have a mooring on the canal near his home.

Case No 170 – neighbour's concerns about management of moorings

1. Mr M complained that British Waterways had not dealt adequately with his concerns about the management of long term moorings close to his home. I found that more than once British Waterways had promised action in response to Mr M's concerns but failed to follow it through properly: even when the matter had been reviewed (and action promised) at the second stage of the internal complaints procedure. All that undoubtedly deserved my criticism. British Waterways should have made sure they had taken the moorers' views into account before promising a 'clean-up' which they had to abort when the moorers complained about that plan. It was reasonable (to be fair to the moorers as well as Mr M) to delay matters until moorers' views had been fully considered, however it was totally unacceptable that British Waterways then failed to keep in touch with Mr M about what was happening. I upheld Mr M's complaint.
2. I was pleased to note that following my involvement British Waterways accepted that they failed to deal properly with Mr M's concerns. Clearly they should have made reasonable efforts to ensure the site was kept sufficiently clean and tidy, but the exact approach to this was a matter for them to decide. However they did need to let Mr M know what they planned to do.
3. The planned development of a clear set of site rules should be helpful to all concerned, but it was for British Waterways to decide what rules were appropriate, bearing in mind the views both of the moorers and of other interested parties such as Mr M. If a possible warden scheme went ahead that should also be helpful. Following my involvement, British Waterways had offered to meet with Mr M and to provide him with a named person for any future contact. I regarded both of those as potentially useful too.
4. I was not sure that British Waterways were under any obligation to provide waste disposal facilities: but, if they did not because of practical problems they had outlined, they did need to make reasonable efforts to ensure that the moorers' obligations not to leave waste lying around the site were adhered to. As British Waterways had accepted, they also needed to make sure that they had adequate systems to ensure that actions promised in response to

complaints were followed through and that there was proper communication with complainants about that.

5. I **recommended** that British Waterways should:
- apologise to Mr M for their failings and pursue all the actions discussed in previous paragraphs;
 - provide Mr M with a copy of any new set of site rules and let him know what action had already been taken or was to be taken to make sure the site was reasonably clean and tidy;
 - make a further offer to meet with Mr M;
 - send an update report on the situation at the site to me in three months' time so that, in the light of that and views from Mr M, I could consider whether adequate action was being taken.

Case No 171 – refusal to allow continued use of a BWML caravan site long term and discrimination

1. Mr and Mrs N parked their residential caravan in a site for touring caravans operated by BWML. Several members of their extended family also had caravans at the same site. It had become the practice for some caravans to be allowed to remain at the site for long periods. Mrs N complained that she and her husband were treated unfairly by BWML in that they were wrongly denied the opportunity to continue use the caravan site long stay, when other people were allowed to do so. She believed that this was related to incorrect allegations made about their behaviour and prejudice against them because of their ethnic background.
2. I could understand why someone who had used the caravan park long stay and was content with the arrangements, would be unhappy when new management arrangements came into force in the early summer of 2006. Caravan owners were sent letters, first to say that no additional long stay caravans would be allowed and that moves of pitch would not be allowed and later giving 28 days notice that all long stay caravans had to leave. However I did not find evidence that Mr and Mrs N were treated significantly differently from anyone else from any other background in the same circumstances, as regards the possibility of remaining at the site. Planning approval for the caravan park only allowed for individual stays for a maximum of 28 days, and no one should ever have been allowed to stay for longer than that. All those who had stayed longer were sent both letters about the change of practice: and in fact it appears that Mr and Mrs N had probably left the site before they received the second letter. I had already explained to Mrs N that she could take matters to court if she wished for a legal judgement on whether or not her family suffered racial discrimination. I did not uphold the complaint.

Case No 174 – adequacy of measures to keep sufficient water in the canal

1. Mr P complained that, between November 2005 and April 2006, during the period when there was a stoppage on the canal several miles above his mooring, British Waterways failed either to take adequate measures to keep sufficient water in the canal pound or to compensate him when that meant he was unable to use his boat.
2. Mr P said that when he tried to leave his mooring he quickly ran aground. British Waterways said that boats were navigating the canal. In the spring of 2005, when dealing with a previous complaint from Mr P, British Waterways accepted that bulk dredging was required and that until that was done there was a risk of disruption to boaters depending on the water levels. British Waterways seemed to accept that Mr P may have experienced some problems in 2005-

06, but argued that those were not within their control. It seemed to me that a real potential for problems with navigation that winter was predictable (because of the known need for dredging and general previous accepted likelihood of problems, combined with the extra strain on water resources due to the stoppage). However, while British Waterways certainly did not have total control over the situation, it would have been possible to reduce the risk of problems: especially by dredging the canal earlier or possibly by pumping additional water round the stoppage in dry spells. Having said that, I did not see evidence that the canal would have been unnavigable for Mr P for the whole period, or that all matters (especially not the below average rainfall in some of the period and the need to have a stoppage at all) were within their control. I also bore in mind the fact that Mr P did not give British Waterways the opportunity to remedy the problem, by reporting it to them once he discovered it. Whilst I noted his doubts about whether action would have ensued to resolve matters, I think that he really needed to give British Waterways an opportunity to remedy the situation following his first discovery of the problem.

3. I concluded on balance that Mr P suffered some minor injustice as a result of maladministration arising from the failure to prevent an initial, potentially predictable and possibly preventable, problem and upheld the complaint to that limited extent. I **recommended** that British Waterways should pay to Mr P a nominal amount of compensation - £25.

Case No 175 - sale of neighbouring land, effects of that and handling of matters

1. A strip of land owned by British Waterways runs between the bottom of Mrs Q's garden and the offside of a disused canal. Mrs Q complained after British Waterways sold part of the land at the bottom of a neighbour's garden to a different neighbour. She was concerned that, in the same way, the land at the bottom of her garden might be sold to one of her neighbours without her first having the chance to buy it, and had not been able to obtain a reassurance she sought on the matter. She complained about that and about the effects of the sale and encroachment on the land: which hindered access alongside the canal and had resulted in loss of wildlife habitat. She was also concerned about various aspects of how matters had been dealt with.
2. I was able to resolve the complaint when British Waterways agreed to give Mrs Q a commitment that if the land at the bottom of her own garden was to be sold she would be given an equal opportunity (with others) to buy it. British Waterways apologised for some earlier delay in taking action and said that they were now pursuing the issue of encroachment on the land. Strictly there did not seem to be any right of access for people to walk along the strip of land, so the consent of British Waterways was required. I could not see that it was appropriate to pursue these other points further.

Case No 192 – increased electricity and pump out charges

1. Mr and Mrs R complained about increases in electricity and pump out charges for 2007-08. British Waterways had already accepted that they did not handle the issue of the electricity charge increase in the right way, and apologised for the lack of adequate notice. I could not see that I would expect them to do more in respect of that failing.
2. I explained that generally I had no power simply to say that British Waterways should be charging one price than another for services, unless they had gone about deciding on a price in the wrong way. I had not seen any evidence of that so could not pursue the matter further.

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 or from the customer services manager Eugene Baston on 01923-201350 or by email to eugene.baston@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

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



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