




THE WATERWAYS
OMBUDSMAN



Annual Reports of

The Waterways Ombudsman
Committee

and

The Waterways Ombudsman

for 2010-11



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ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN COMMITTEE FOR 2010-11

The Committee

1. This is the sixth annual report of the Committee, covering the period April 2010 to March 2011. The Committee oversees the operation of the Waterways Ombudsman Scheme and the independence and accessibility of the Waterways Ombudsman. The main roles of the Committee are:

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

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

2. The Committee normally has eight members. Of those, three (including the current Chairman) are independent and three are appointed by the British Waterways Advisory Forum (BWAFF) - ie from groups, such as users and businesses, with interests in the waterways. The remaining two members are appointed by British Waterways. Full details of the membership of the Committee are given at the end of this report.

3. The Committee met twice during the year, in July and December 2010. Minutes of Committee meetings are available on the Waterways Ombudsman Scheme's website at www.waterways-ombudsman.org. This year the Committee, as well as doing its usual work, has been considering the impact of the proposed changes affecting management of the waterways.

The Scheme

Ombudsman's reports

4. 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

5. A customer satisfaction survey for the Committee has operated since November 2007, with comments being returned to the Chairman. Forms are sent out a few weeks after the conclusion of work on each complaint, to people who wrote with complaints which were accepted for consideration, or where they made enquiries but the complaint had to be declined as out of jurisdiction.

6. Until now forms have not been sent to people where contact was made only by telephone or email. As an increasing proportion of complainants are only making contact via email, the number of forms sent out has reduced. The response rate has also fallen from its previously high level of about 70% for investigated cases to only 44%. So the number of responses has fallen significantly. In May 2011 the Committee decided that a system for surveying customers by email should be developed and used in future, to try to increase the number of responses.

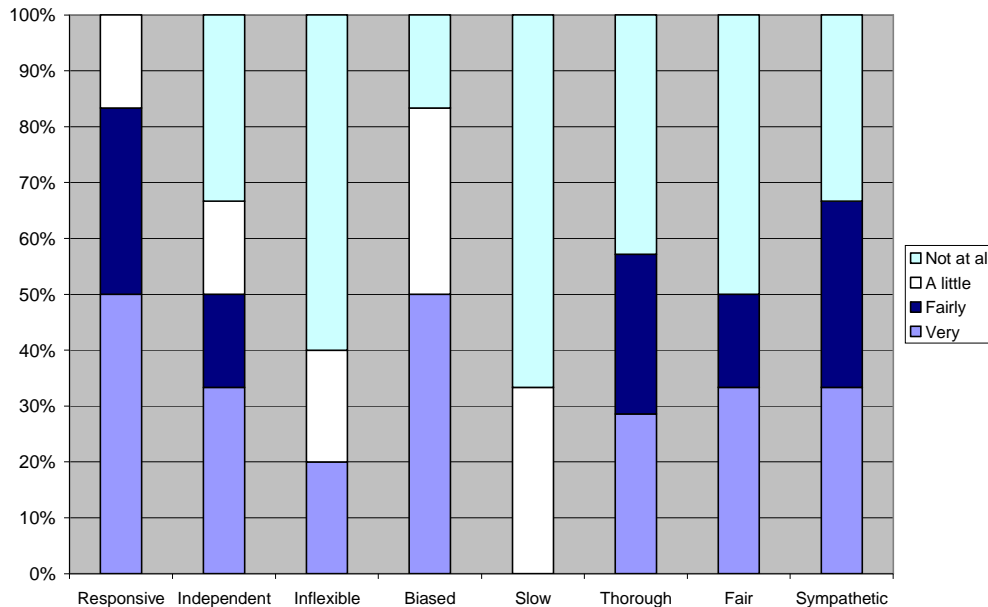
Enquirers' views

7. Only one of four forms sent to enquirers was returned. That person was very satisfied with the service.

Views of those whose complaints were investigated

8. Given the small number of such responses in the last year (only seven, and those people did not always answer every question), the results may not be particularly representative. However most felt that the Ombudsman had understood their complaints and they had been kept adequately informed about progress. The chart below shows the views given about some other aspects of the service as perceived by complainants.

Views of complainants 2010-11



9. The fact that some previous queuing for attention has been eliminated is reflected in the fact that none of the respondents said they felt the service was very or fairly slow. As can be seen, the service scored best on speed, responsiveness, sympathy, thoroughness and fairness. Sadly, despite all the evidence to the contrary, some people still felt the service was biased

10. As previously, satisfaction with the service followed a very similar pattern to satisfaction with the ultimate decision: though one complainant who was dissatisfied with the decision did express satisfaction with the explanation, and said they would still recommend the service to others.

11. The Committee also considered the wide range of more general comments made by complainants but did not feel that the comments indicated any need for significant revision to the Ombudsman Scheme. Comments ranged from:

'The Ombudsman was very biased towards British Waterways even though they constantly refused to deliver requested information on time. I responded to letters within timescales...'

to

'I found/felt that my concerns were understood and were handled in a personal manner. Excellent. A model for best practice.'

Complaints about the Scheme

12. In previous years some complaints about the Ombudsman or the Scheme have been sent to the Chairman. This year there were none.

Operation of the Scheme

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

14. The Committee noted some problems during the year with delays in payments by British Waterways for Scheme costs, but remained satisfied that funding eventually made available was sufficient and there had been no interference with the Scheme's efficient and effective operation.

Impact of proposals for changes to British Waterways

15. During the year tentative proposals for British Waterways (in England and Wales) to be abolished and replaced by a new charity, have developed into a firm intention for that to be achieved by April 2012. The Committee have discussed implications for the current Waterways Ombudsman Scheme. The new waterways charity will need to make its own decision about future complaint arrangements, and the Waterways Ombudsman Scheme will end in its current format. However the Committee agreed in December 2010 that it would be beneficial if a similar new Ombudsman scheme was adopted by the new charity, with the same independence of governance. They were pleased to find that the Government shared their view. The consultation paper, issued in March 2011, on the proposals for the new charity included:

'...The Government believes that such a scheme would be of benefit to the new charity, subject to some minor changes to the Rules of the Scheme (currently determined by the British Waterways Board, but in future by the Trustee Board). The key will be that it remains a full member of the British and Irish Ombudsman Association which is the external benchmark of independence.'

16. Committee members are keen to do what they can to help the new charity set up a new scheme of that sort and to ensure a smooth transition. There is likely to be significant detailed work on transitional arrangements to carry out during 2011-12, both regarding the new charity in England and Wales and future complaint arrangements in Scotland (where the waterways will remain within the public sector).

Membership of Committee and Appointment of Ombudsman

17. The second terms of office of a number of Committee members and of the Ombudsman were due to end during 2011, and the Rules of the Scheme would not have allowed a third term. However appointing new personnel might have proved difficult in the transitional period and with the likely limited period of office, and there seemed to be significant potential benefit from having an experienced Committee and Ombudsman available in the period leading up to the changes. That would both facilitate the setting up of new complaint arrangements for successor bodies and help to ensure a smooth transition. The Committee felt that they should seek a temporary change to the Rules to allow for a short third term of office (to mid 2012) for relevant Committee members and the Ombudsman. British Waterways agreed with

that proposal and made the necessary change to the Rules in January 2011. (The full text can be found on the Scheme's website.)

18. At the BWAF meeting in April 2011 and at the next Committee meeting in May 2011 the relevant organisations agreed to extend terms of the members whose terms were due to expire in 2011. The Committee also decided to continue to hold temporarily the ongoing vacancy for an independent member, though they would appoint one if the Committee needed to appoint a new Ombudsman during the period. However the Committee also agreed to offer the current Ombudsman a short third term of office into the first half of 2012, to see the Scheme through the changes and the setting up of new complaint arrangements.

Conclusion

19. The Scheme itself has been running smoothly and a significant part of the effort for the Committee in 2010-11 has been dealing with the implications of the plans for changes in management of the waterways. That will be a major focus of the Committee's work in 2011-12 and additional meetings have been arranged for that purpose. Changes to the Rules of the Scheme will allow an experienced Committee and Ombudsman to oversee the transition to new complaint arrangements in both England and Wales and in Scotland. The Committee's aim will be to ensure that future complaint arrangements continue to offer similar access to an independent Ombudsman, and that the transition from old to new arrangements is as seamless as possible.



Members of the Committee – during 2010-11

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 is the UK Member on the Council of Europe's Commission for Democracy Through Law ("The Venice Commission").

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.

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 until recently 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 Fund Trustee and Member of the Audit Committee; Independent Appeals Commissioner for the Direct Marketing Authority; Independent Regulatory Director and Pension Fund Trustee of the British Horseracing Authority; Chairman of the Audit and Standards Committee of Warwickshire County Council; Formerly Chairman of the Horseracing Regulatory Authority, a Director General 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 2010-11

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ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN FOR 2010-11

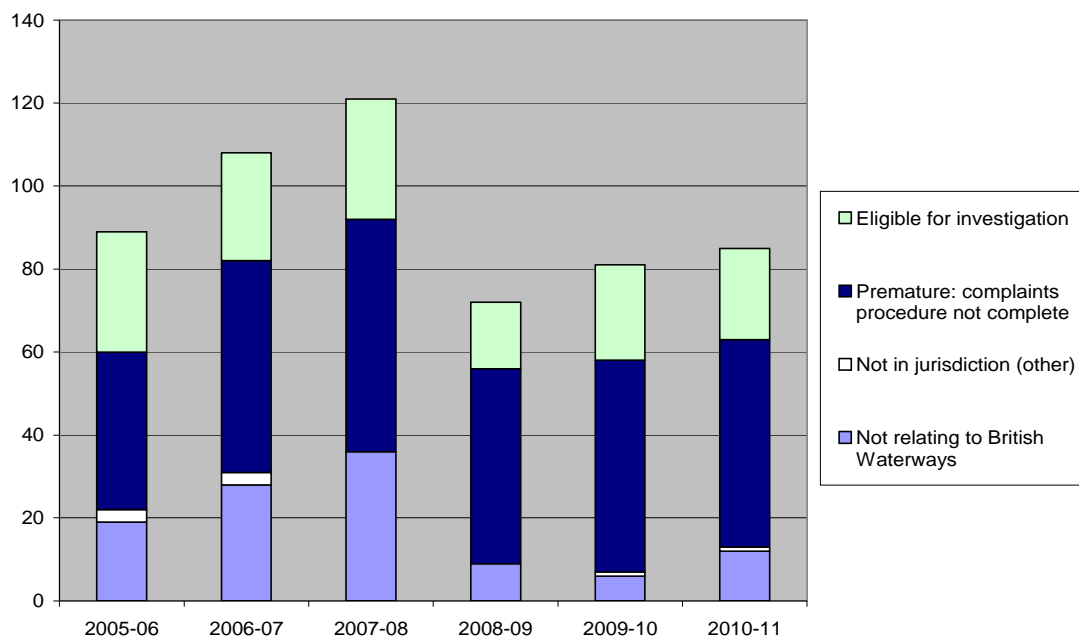
Introduction

1. This is my sixth annual report as Waterways Ombudsmen. It covers the period from April 2010 to March 2011. There have not been any major changes in the complaint workload: but significant change, with implications for the Ombudsman scheme, is approaching - with the proposal to alter the status of British Waterways in 2012.

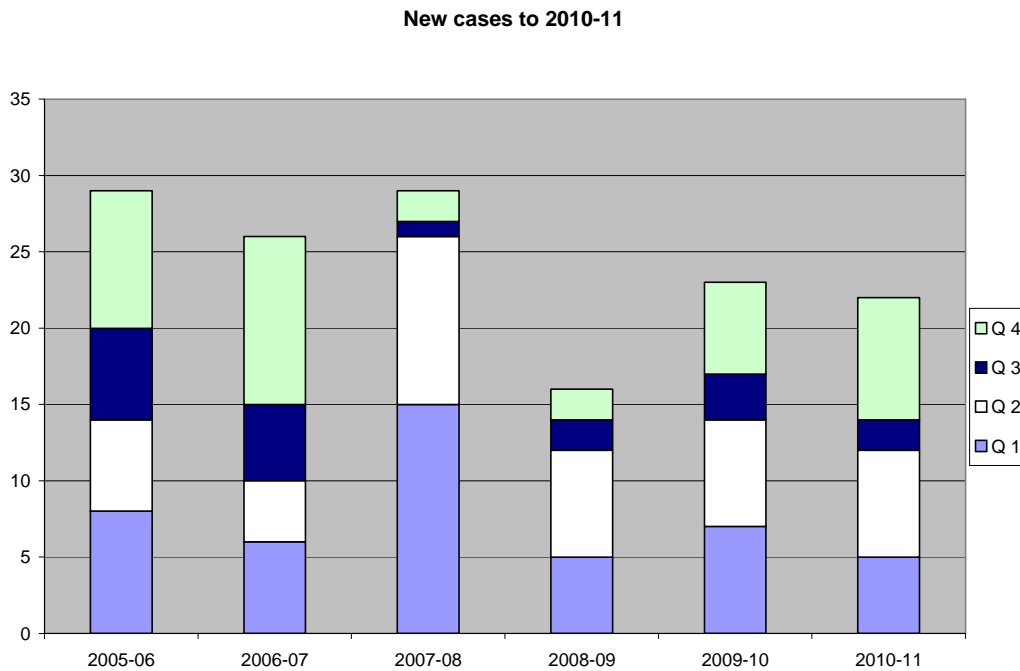
Casework - workload

2. The workload this year has been very similar to that last year. I dealt with 85 enquiries (compared to 81 in 2009-10). The number of enquiries about matters unrelated to British Waterways has increased slightly (12 compared to 6 last year), for no obvious reason, though a number related to other waterways or to private marina or hireboat operators. The number of enquiries relating to British Waterways remained very similar to last year.

Enquiries work



3. I can only consider complaints put to me which have completed stage 2 of British Waterways' complaints procedure (or where the procedure has failed). 22 of the enquiries were complaints within my jurisdiction which I was able to accept for consideration: again similar to the number (23) last year.



4. The number of complaints entering the British Waterways' complaints system at stage 1 has continued to fall, from a peak of over 1000 in 2005-06 to 337 last year and only 230 this year. However the proportion of those which eventually come to me has reached a new peak: now nearly 10% will eventually come to me. That figure was less than 3% in 2005-06. Various explanations of this are possible, including:

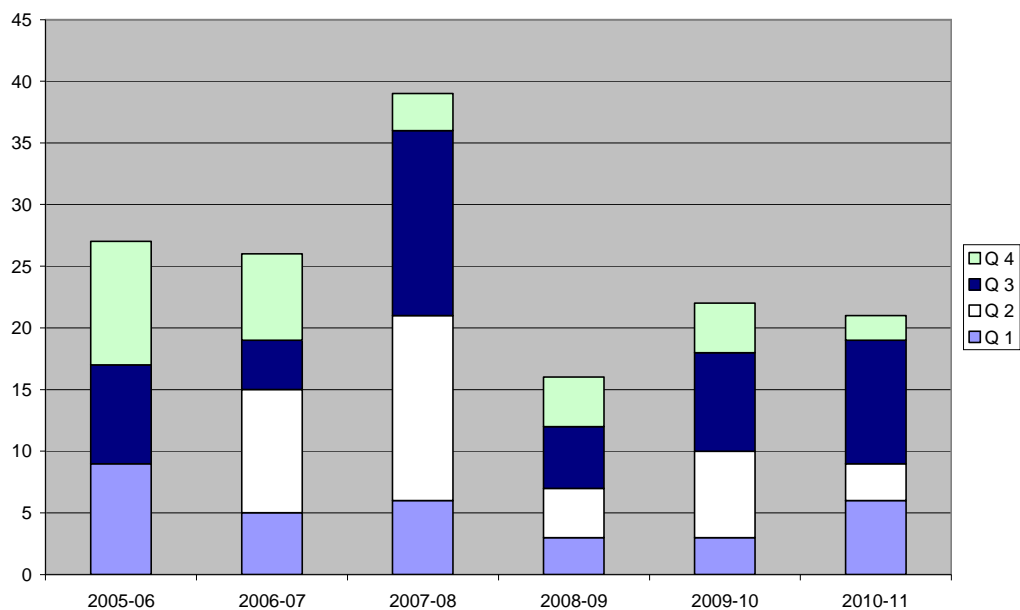
- British Waterways may be giving less cause for concern or complaint;
- the more easily resolvable concerns may now be being dealt with immediately, without developing into complaints;
- some matters may now be being dealt with outside the complaints procedure, even though previously they would have been treated as formal complaints.

Whatever the explanation, and it could be any or all of the above or for other reasons, the number of complaints reaching me has not fallen in the quite the same way the number of initial complaints to British Waterways has fallen.

5. I completed 21 investigations this year compared to 22 last year and 16 the year before. If I can resolve complaints informally I generally do so, as that produces the right outcome in the most efficient way. This year three

complaints were resolved wholly or in part as a result of my informal intervention. Of the remainder, one was discontinued after considerable progress, because of the complainant's failure to provide necessary information. On another, after clarifying various matters, ultimately I made no finding because any decision hinged on a debatable point of law. I upheld three complaints wholly or in part, and the remaining 13 complaints were not upheld. As in previous years, British Waterways have agreed to act upon all the recommendations I have made in my reports, though in one case there was a considerable delay in the response. They have apologised to complainants in respect of any critical findings and paid compensation or taken other remedial action as appropriate.

Investigations completed quarterly



6. The average time to complete cases improved significantly this year, going down to 80 days after previously always being more than 100 days. For the first time in the last five years there were no complaints which took more than a year and there were only two which took more than six months. This reflects the fact that there has been no significant queuing of cases awaiting my attention. I have still not yet needed to call upon the contractors I appointed previously to assist with any peaks of work.

<i>Time to completion</i>	<i>2006-07</i>	<i>2007-08</i>	<i>2008-09</i>	<i>2009-10</i>	<i>2010-11</i>
<3 months	6 (24%)	12 (31%)	10 (63%)	13 (59%)	15 (71%)
3-6 months	11 (44%)	17 (44%)	4 (25%)	4 (18%)	4 (19%)
6-9 months	2 (8%)	7 (18%)	1 (6%)	2 (9%)	1 (5%)
9-12 months	3 (12%)	0	0	1 (5%)	1 (5%)
>1yr	3 (12%)	3 (8%)	1 (6%)	2 (9%)	0

At the year end there were seven complaints in hand, all but one of those was less than six weeks old: the seventh was nearly a year old having been suspended for much of that time, pending a decision on a Court case.

7. Fifteen of the 21 completed investigations related to boating and, of those, 11 related to moorings in some way. Five other complaints were from neighbours of British Waterways about boundaries, rights of access or management and one complaint was from a tenant of a house owned by British Waterways. Summaries of all completed investigations can be found in Annex B. One investigated complaint related to Scotland, one to Wales and the rest to England. One of the complaints related to British Waterways Marinas Limited (BWML – a wholly owned subsidiary of British Waterways which operates marinas) and the rest to British Waterways directly.

Service standards

8. The service standards for the Ombudsman scheme set by the Committee in March 2009 were 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;
- 65% of investigations complete within 6 months of acceptance.

9. In July 2010 the Committee decided to amend the third of these to a target of 70%.

10. All the targets have been exceeded during 2010-11:

- the first two standards have been achieved in 100% of cases;
- the third standard has been achieved in 90% of completed cases.

Issues arising from complaints

Complaints handling

11. Early in the year British Waterways moved from having all stage 2 complaints being considered by one of their Directors to having a much wider pool of senior managers considering stage 2 complaints. The managers concerned were all offered a briefing session on their new complaints role, which most were able to attend and at which I made a presentation and answered queries. I am pleased to say that I have not so far seen any evidence that that change has caused any particular difficulties for complainants or drop in the standard of stage 2 complaint replies: in fact I have had only one complaint since the last annual report which I accepted on the basis that the complaints procedure had failed - fewer than the year before. (Other problems of this sort, mentioned in summaries of some cases later in this report, occurred the previous year.) There have been some cases

where responses to complainants or to me have been slow, but those have generally involved Directors themselves rather than other senior managers.

Legal issues

12. Possibly even more than in the past, I have received complaints this year which hinged on technicalities of waterways law. Obviously, where the legal position is clear, then I will expect British Waterways to comply with the law. But, sadly, too often the legal position is unclear. Relevant legislation is contained in a series of Acts, not easily accessible or understandable to the average person, and at times confusing and capable of significantly different interpretation even by those experienced in such matters. This situation does potentially seriously disadvantage individual citizens, who may find it difficult to ascertain their rights and responsibilities, and even to obtain legal advice in such a specialist area. British Waterways themselves can sometimes interpret legislation in different ways depending on what suits them in a particular case – see Case No 516. Whilst I have no great expectation of any new consolidating and clarifying waterways legislation being forthcoming, I feel it is only right to record the need for that.

Mooring- especially residential

13. One area where the legal situation can leave boaters particularly vulnerable, is in residential moorings. As last year, a significant proportion of the boating complaints were from residential boaters. Living on a boat can appear to offer an attractive, alternative lifestyle, and comparatively inexpensive accommodation. However, in reality, finding a residential mooring in the area of your choice can be very difficult (if not impossible) and many residential boaters still only have annual mooring contracts, offering very limited security of tenure and without any contractual restraint on price rises. When residential moorings (particularly those close to facilities and employment opportunities) are hard to find, the market rate will inevitably rise: mooring prices have risen quite steeply for many such boaters and produced a number of complaints. Whilst I am sympathetic to their situation, I am not able to help unless it is clear that normal pricing policies have not been properly followed and the price being asked is clearly above any reasonable market rate.

14. Another issue which can arise for any moorers but which is probably more keenly felt by residential boaters, relates to the level and type of services provided at a mooring. This arose in Case No 495 this year, but it is not the first time I have raised the concerns in this area. In my 2006-07 annual report I raised my concern that the lack of clear information for moorers about what services will be provided in their mooring contract. It appears that the situation has not improved since then. In Case No 495 the moorer was paying over £5000 for the mooring in 2010-11. As I said in my report, I cannot think of many services, for which people would pay such a large annual fee, and which affects them so significantly, for which the service they will receive is so poorly defined. Neither the general terms and conditions nor the site rules provided any clear information about that.

15. Secondly, moorers did not seem to be consulted at all about what services they would like to have provided (and to pay for). Whilst clearly it will not generally be possible to satisfy everyone, and consultation is not without its own costs, I cannot help but feel that the current situation only makes complaints more likely. If a substantial majority of long term residents at a site wished to have a particular service provided and pay the full costs of that, then I would have expected any reasonable landlord at least to give serious consideration to that. Whilst in the particular case I did not feel that I could say that the lack of consultation and information about services to be provided necessarily amounted to maladministration or unfairness, I did strongly encourage British Waterways to review their practices in this area. British Waterways told me that they were attempting to improve communications for boaters so that they knew what to expect. They said they were reviewing national contracts for reactive maintenance and once service levels and prices were agreed they hoped to communicate schedules to all mooring customers. That may go some way towards informing customers better, but does not seem to offer any progress towards meeting local customer needs.

A positive footnote to last year's report

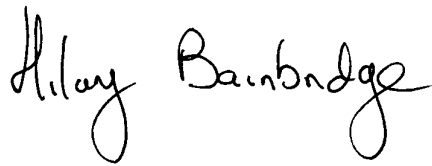
16. Last year's report included Case No 444 about refusal to allow an unpowered boat through a lock on the Weaver navigation. I regarded that complaint as resolved when British Waterways agreed to review their position on unpowered boats in locks, and to make arrangements for the complainant to contribute to the review. He contacted me in October 2010 to let me know British Waterways had agreed to lift their embargo, with some conditions. He offered further thanks for my help, and sent photos of him and his wife successfully navigating a lock on what was clearly a very enjoyable trip for them on the Weaver in their rowing skiff - a very positive final outcome.

Plans for 2011-12

17. In my last annual report I said that 2010-11 would be my last full year as Waterways Ombudsman as I would complete my second term of office at the end of June 2011. My focus for 2010-11 was to be on consolidating the scheme's achievements and ensuring it was generally in a good state for handover to my successor, rather than on carrying out any major reviews or changes. However, as explained in the Committee's report, the proposed changes affecting British Waterways in April 2012 have meant that I have been asked to continue as Ombudsman until then. Assuming that the current proposals are implemented, there will be a number of issues to resolve to ensure a good service is still offered by the current scheme right until its end.

Conclusion

18. Like the Committee I was delighted to see the Government's statement in the consultation document that they wished to see a new full Ombudsman scheme for the proposed new body. I hope that that proposal will be adopted: anything less would be a backwards step. Assuming that the proposal is adopted, it will also be important to get any new Ombudsman scheme, and a new Ombudsman, for the new waterways charity off to the best start possible and to ensure continuity in the transition. I am committed to doing my best to assist with that, alongside my existing work for the current scheme.

A handwritten signature in black ink that reads "Hilary Bainbridge". The signature is written in a cursive style with a large, looping initial 'H'.

Hilary Bainbridge
[Waterways Ombudsman](#)

Detailed data on enquiries – 2010-11

Group		
A	Not relating to British Waterways	12
B	Premature: internal complaints procedure not complete	50
C	Not in jurisdiction (other)	1
D	Eligible for investigation	22
	Total	85

Group A

Three were complaints about private marinas or hireboat companies, one was about licence fees of another navigation authority, one was about a boat safety scheme inspection and the remainder were about an assortment of matters (including one about nuclear submarines and one, in Russian, which turned out to be about a water utility company).

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. A few of these were more requests for information than complaints. However most of these enquiries 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, especially relating to property also arose.

Case examples

1. An angler emailed me expressing concern about the amount of rubbish left at a British Waterways reservoir by other anglers. He believed that the anglers, or their clubs, should be fined. I gave him advice about how to make a formal complaint to British Waterways, and about his right to approach me if that did not resolve matters. I heard no more.

2. A man whose home had been flooded two years before emailed saying that he now felt British Waterways were responsible (because of poor management of a culvert) and that they should pay compensation for the damage to his home. It seemed that his own and British Waterways' insurers had already been involved. I telephoned him to clarify matters and explain

the limitations of what I might be able to do. He sent me more detailed information. Having considered that I sent him a long email outlining various options, including pursuing a complaint, for taking forward aspects of the rather complex issues involved.

3. A woman emailed me to express her concern that, following her partner's death, British Waterways had declined to transfer to her a mooring which the couple and their child had used for their boat, but were putting it up for auction. I explained to her the need to use British Waterways' internal complaints procedure, before I could consider her complaint. The woman approached me again two months later, having had her complaint considered at stage 1 (which did not change the decision), and having agreed to an extension in time for a stage 2 response. She had still not received a response by the end of the extended deadline.

I contacted British Waterways and it transpired that they had already realised that, due to a typing error, the stage 2 response had been sent to the wrong email address. They sent the response to the correct address. Whilst at stage 2 a Director had reversed the original decision and agreed that the woman should be allowed to take over the mooring, his response had not fully covered some associated issues the complainant also wished to have resolved. The Director sent a further letter covering all the remaining points to the complainant's satisfaction, and I ended my involvement.

Group C

This was a complaint (about the cost of discharging water into a canal) on behalf of a large business with an annual income of more than £1m, which meant it was outside my jurisdiction.

Summaries of decisions on all eligible cases

Index of investigated cases

Case No 458 – issue of enforcement notices, damage to boat and complaint handling

Case No 478 – inconsistency in charging by BWML for use of hardstanding, and complaint handling

Case No 479 – action on issues relating to a landing stage

Case No 481 – arrangements regarding licence on sale of boat

Cases No 483 and 485 – price of residential moorings

Case No 487 – pricing of residential moorings

Case No 495 – management of residential moorings

Case No 502 – handling of mooring application

Case No 509 – delay in implementing actions regarding conditions for houseboat certificates, promised previously

Case No 510 – restriction of use of moorings, and dealings with private pleasure boaters

Case No 515 – response to concerns about effects on neighbouring landowner of visitors to British Waterways site

Case No 516 – power to require licence for boat moored at an ‘end of garden’ mooring on a river waterway

Case No 517 – need for dredging

Case No 518 – issues relating to tenancy and possible sale of a house

Cases No 524 and 542 – access for residents along gated section of towpath

Case No 532 – requirement for boat safety certificate, mooring and licence fees

Case No 537 – land ownership and works to canal bank

Case No 542 – see Case No 524

Case No 552 – management of canal outside public house

Case No 559 – statement in National Boating Brief



Case No 458 – issue of enforcement notices, damage to boat and complaint handling

1. Mr A kept his boat in a privately run marina, but was unable to use it for some time. He believed that, because his boat did not leave the marina, it did not require a licence. In June 2008 he spoke to a member of staff and emailed British Waterways about this. He first complained after an enforcement notice was stuck to his boat by British Waterways in November 2008. He then obtained a rivers only licence. In January 2009 he was told that he required a full licence because the marina is on a canal not a river, and a further invoice would be sent. In May 2009 a further notice was stuck on the boat, because Mr A still had a rivers only licence. He said he had been given permission to moor without a licence, suggested that his boat had been singled out, and that it had been damaged both by glue from the notices and from diesel spilled when staff boarded the boat. He also felt that his complaints had not been handled properly, in various ways.

2. I could understand why anyone might initially expect that a licence would not be necessary in Mr A's circumstances. However British Waterways hold the freehold of the marina, and routinely require operators of such marinas to ensure that all boats are licensed, unless the boat is out of the water. I could see no basis for criticism of either party regarding the question of whether permission had been given to moor without a licence, when different interpretations were possible of an email Mr A had sent British Waterways.

3. I could not see that Mr A had good reason, by January 2009 if not earlier, to believe that a rivers only licence was all that was needed: the marina is on a canal not a river. However British Waterways were at fault for not dealing with that issue properly back in December 2008 when they processed Mr A's licence application, and then for not sending the invoice promised in January 2009. Had they done either of those I would not have upheld the complaint about the second notice. As it was, I upheld that complaint to the limited extent that matters had not been adequately followed through with Mr A before the second notice was served.

4. I did not uphold the complaints about damage to the boat: British Waterways did suggest how the glue could be dealt with and offered to make arrangements remove it if that did not work. I could not see that I would expect them to do more. I would have thought that generally boats should not be left in a state where diesel could spill so easily.

5. I did not uphold a complaint that a manager had failed to answer questions put to him: though I noted that his response had omitted to tell Mr A about his rights to take the complaint further. I saw no basis for me to investigate further some other issues.

6. The response to one complaint took about 25 working days, because of a delay in picking up or loss of a fax. British Waterways had already apologised about that delay and so I took matters no further.

7. The response to Mr A's stage 2 complaint took over three months. An apology was made for an initial delay of a month but then, when the director wished to speak with Mr A on the telephone, that took over a month to arrange, during the course of which commitments to call were made by or on behalf of the director, but not always adhered to. Even after a call finally took place, it took over another month for any response to be sent. I was not satisfied that the apology was an adequate remedy given the significant problems here. (I too experienced significant delays when seeking information from the director, which caused further delay.) I upheld this aspect of the complaint to the extent described above and felt that, exceptionally, a small amount of compensation was appropriate for the frustration involved for Mr A in trying to progress his complaint and the costs of abortive phone calls etc.

8. I recommended that British Waterways should now send Mr A a detailed invoice for any licence fees outstanding for a full canal and river licence, and offer to arrange a reasonable payment plan. I also recommended that they pay Mr A £25 in compensation.

Case No 478 – inconsistency in charging by BWML for use of hardstanding, and complaint handling

1. Mr B complained that for several years he had been made to pay more than some other customers to keep his boat on hardstanding at a BWML marina. He felt he was due a refund of some of the fees. By the time the complaint reached me, British Waterways (and BWML) had accepted that a mistake had been made: some other people were being allowed to work on their boats whilst paying only for a storage contract on hardstanding, whereas Mr B had been made to pay the higher Grade 2 rate to use the hardstanding in order to work on his boat.

2. However it appeared that the problem was not that Mr B had been overcharged but that the other people were undercharged. Although the situation was clearly unfair, I had to ask myself how much worse Mr B was than if everything had been done correctly? If everything had been done properly some other people would have had to pay more, but Mr B would still have had to pay the same. So I could not see that he was actually financially any worse off than he would have been if things were done properly. The only injustice I could therefore see to him was from the inherent unfairness of the situation. British Waterways had already apologised about that and it appeared BWML had taken action to make sure that fees were managed better in future. I could not see that I could expect them to do more.

3. Mr B was also, quite rightly, concerned about the way his complaint had been handled. I had accepted his complaint on the basis that the complaints procedure had failed in its operation because:

- in a third round of correspondence Mr B was unreasonably told that BWML could not do anything because he was no longer a customer;
- no information was given by BWML to Mr B about the complaints procedure, despite his very clear dissatisfaction, until after he tried to move to the second stage (after I gave him details of the procedure);
- although he had tried to use stage 1 of the complaints procedure and had already had three responses from BWML, a request to move to stage 2 was rejected. He was sent back for a fourth response from BWML;
- when he received that fourth reply he was told he needed to write to a particular member of staff, who had actually left British Waterways months before.

4. I had expressed my concerns about those matters to British Waterways shortly after Mr B first contacted me. They accepted that the complaints procedure had broken down, apologised about that and confirmed to me that BWML staff were to be trained regarding the complaints procedure, and a check would be made that in future they were following the published procedure. I felt that that was much as I could expect them to do now to put matters right.

Case No 479 – action on issues relating to a landing stage

1. Mr C owned a property adjacent to a canal, and had a landing stage at the end of his garden. The occupant of an adjacent property claimed ownership of the landing stage. At one point the neighbour moored a boat there and left items on the landing stage. Mr C approached British Waterways who said that the supporting structure of the landing stage was within the bed of British Waterways' owned canal, and they reserved the right to insist on its removal. In April 2008 they said they had instigated enforcement proceedings against the neighbour. In July they asked the neighbour to remove the landing stage by the end of December 2008. Correspondence between Mr C (and his solicitors) and British Waterways continued during 2009, but the landing stage remained in place. Mr C received a response at stage 2 of the complaints procedure in December 2009, which apologised and accepted that British Waterways had not followed through efficiently and effectively on the matter, and said they would be responding as a matter of urgency. Mr C complained to me about inactivity by British Waterways since 2008.

2. Following enquiries I made and initial steps towards implementing suggestions I made about a possible way to resolve matters, British Waterways reviewed the situation on the ground. They then concluded that (contrary to what they had said previously) the landing stage was *not* on their land at all, but on land which Mr C believes that he owns. Any dispute about ownership of the structure/the land beneath it was then entirely a matter between Mr C and the neighbour. Initially Mr C said that he wished to pursue compensation for costs he had incurred because of the way British Waterways had handled matters, particularly their change of view about their role in

respect of the landing stage. However he did not provide information I requested to enable me to reach any view on that, and eventually I therefore discontinued my investigation of his complaint.

Case No 481 – arrangements regarding licence on sale of boat

1. Mr D sold his boat a few months after buying and licensing it for a year. He cancelled his direct debit for the licence fee, and left the licence disks on the boat. He expected the new owners to return the disks to British Waterways. However their licence terms make it clear that it is the original owners' responsibility either to return the licence disks to obtain any refund, or to pay the full amount owing on the year's licence and then arrange for it to be transferred to the new owner. Mr D said that he had been told by British Waterways' staff that the new owners had requested to take over the licence and that that would be acceptable even though it was not usual. Mr D complained that British Waterways had broken their refund terms by transferring the licence to the new owners, which meant that he was not able to ask for the money or the licence disks back, and that it was therefore wrong for British Waterways to pursue him for the whole annual licence fee. He also felt that they had not dealt properly with his complaint.

2. There were significant conflicts between Mr D's and British Waterways' accounts of what was said and meant in various telephone conversations. However I found nothing to indicate that the licence had been transferred into the new owners' name. I could appreciate that it might seem odd that ownership could be recorded in the new owner's name but the licence remain in Mr D's, but that is possible and appeared to have been the case here. The licence renewal in Mr D's name included a signed declaration that he had read the terms and conditions.

3. If, as he said, Mr D had made a clear agreement with the new owners that they would return the disks so he could obtain a refund, then I could appreciate why the situation seemed very unsatisfactory for him. However the new owners seemed to have told British Waterways that they understood that a transfer of the licence had been part of the sale agreement. It therefore appeared that Mr D's dispute was more with the new owners rather than British Waterways. I had not seen the sort of evidence which I would need to uphold the complaint against British Waterways nor was there was further investigation I could usefully do to try to resolve matters on the disputed points about what Mr D was told or how his complaint was handled. I did not uphold the complaint.

Cases No 483 and 485 – price of residential moorings

1. Mr E and Mr F, who have residential moorings at the same site, complained separately about the pricing of their moorings from 2009. Some of the points they raised were similar and some were different. My enquiries showed that the majority of bids for vacant moorings at the site had been significantly more than Mr E and Mr F were asked to pay after the price increase and that local prices (even for non-residential moorings) were reported to be similar or

more than the complainants had been paying. Overall I could not see that there were any grounds for me to believe that British Waterways had failed to follow their published procedures when setting the price for the moorings in 2009. I did not uphold the complaints.

Case No 487 – pricing of residential moorings

1. Mr G made a complaint on behalf of an association of residential moorers at a particular site about British Waterways' proposals regarding pricing for their moorings in 2010-11 onwards. Their concerns included that the rises (of 20% or more each year) would effectively make moorers homeless, that British Waterways had failed to demonstrate how the rises were in line with market rates, that they now expected current owners to make good their inactivity during twenty years of underpricing, and that at one point British Waterways had been amenable to phasing in increases over 10 years (in return for giving up assignability) but, after accepting the moorers' rights to houseboat certificates, now sought to push up mooring rates much more quickly.

2. I started from the basis that trying to achieve a market rate was reasonable. As residential moorings are in short supply, and this site has an excellent position in an urban area, the market rate was likely to be significantly above average. However the situation was unusual because of the previous history. Although related issues were too historic to be within my jurisdiction they were relevant background. About 10 years before British Waterways allowed a seriously confused situation to develop. Rather than assignable houseboat certificates as previously, they began issuing only standard mooring permits, which are explicitly not assignable, but in practice still allowed moorers to assign them. Some moorers then paid significant premiums to take over boats, because of the value placed on the moorings and the previous history of assignment being allowed. The mooring fee seemed to have been set on the basis that there was no assignability and was apparently significantly less than the market rate (given that people were prepared to pay large premiums to acquire a boat on a mooring there). The situation was in the interests of neither British Waterways (who were not generating as much income as they should) nor moorers (who were in an uncertain position regarding assignability of the mooring, despite often having paid a significant sum in the expectation of that, and who faced significant rises in fees).

3. Protracted negotiations had taken place about how to resolve the problem. British Waterways put forward one way of calculating a market rate, and in 2007 Mr G put forward another (which produced a significantly lower value). In a final letter in 2009 British Waterways put forward three options. Two of them involved new mooring agreements giving security for a number of years, with gradual fee rises during that period. The third option was to keep houseboat certificates, but having fees rise more steeply towards the market value originally put forward by Mr G (uprated for inflation) in the years to

2011-12. It seemed that moorers did not take up the other options, and kept or accepted houseboat certificates.

4. Mr G believed that British Waterways were asking moorers to pay back money underpaid in previous years by other people. I found no evidence of that. Other key issues raised were the process by which the market rate was set and the speed of movement towards that. Although it was evident that British Waterways had been basing their assessments on the market rate which Mr G himself had put forward in 2007, he suggested that there had been a considerable market downturn since then.

5. There was very little direct evidence about the market rate for the moorings (or trends in that), when no moorings at the site had gone out for tender/auction and there were no straightforward comparison sites. What evidence I could obtain about fees for residential moorings in the area showed they were not out of line with the 'market rate' figure being used by British Waterways. I could not find any direct evidence about the *trend* in market rate for residential moorings in the area since 2007, but the best evidence (albeit weak) regarding a site elsewhere did seem to show a dip since December 2008 but some suggestion of a recent recovery. House prices in the area might provide some proxy evidence: they showed a strong recovery almost getting back to May 2007 levels by April 2010.

6. There is no formula or method which could establish definitively a 'true' market rate. I did not find evidence that the rate British Waterways were using had been arrived at erroneously or was unlikely to be within a reasonable range. It was a figure originally put forward by Mr G, and I did not see evidence of such a downturn in the market as to suggest that that figure was now clearly erroneous. Whilst I could not say whether the rate being used was 'right', I had not seen evidence that it was clearly 'wrong'.

7. British Waterways' policy was that generally no more than 15% increases should be applied, but that more might be appropriate for residential moorings where there was evidence of substantial below-market pricing. By October 2009 moorers were still paying less than three-quarters of the assessed 'market rate' figure. Although there were lower rates of increase at some residential moorings elsewhere, the fees at those sites were already very much higher.

8. Mr G questioned why, when a 10 year phasing-in period had been offered previously, that was not now on offer. But that had been offered if moorers accepted the ultimate loss of the ability to assign their moorings. When that was no longer the situation I could not see grounds to criticise British Waterways for wanting to phase in the rises more quickly. Whilst I appreciated that there was a highly regrettable period of considerable anxiety for moorers, that had been resolved. Given the history, I would not have thought it reasonable for British Waterways suddenly to increase prices to full market rates. However residents had known since April 2007 that the

mooring fees were likely to increase considerably to a market rate and even after the further 25% increase already notified for 2011-12 the fee would still not have reached the rate suggested by Mr G in 2007. By April 2012 even those who came as recently as 2006 would have benefited by paying somewhat less than a market rate for several years, and all would have had five years to adjust to the significant increase in prices. That did not seem unfair or unreasonable, even in the circumstances here. Ultimately I could see no grounds for me to say that the moorers were now suffering injustice from maladministration or unfairness by British Waterways in the proposed price increases. I did not uphold the complaint.

Case No 495 – management of residential moorings

1. A residential boater complained about the decision in 2007 to remove a mooring warden service from the site where he lived, without consultation or taking the reduction in service into account in the fee. He mentioned in particular gritting, issues with locks, signage and unauthorised boats. He also complained about management of gardens (including pest control) and about arrangements for obtaining electricity cards. The resident contended that mooring fees paid in 2009 and 2010 should be refunded in part to residents and future fees should be reduced, following reinstatement of wardens and removal of gardening contractors etc.

2. Generally British Waterways have considerable discretion about what services they do or do not provide to moorers: I could not simply say that a particular service should or should not be provided, unless that was necessary to remedy an injustice caused by maladministration or unfairness. The accounts of the parties about exactly what services the warden had been expected to provide and did provide (which may have been more than was strictly demanded) differed. I could see that the resident valued very highly the services provided by the warden, and had felt a significant loss in service. However even if a warden had been retained after 2008, following a change in policy, he or she would not have been expected to do all the tasks the warden had done in the past.

3. I could see why the resident would like a full gritting service, but I could not see grounds for me to criticise British Waterways for not providing one. The warden was never required to be on site all the time, and so there was never any guarantee that he would be available to deal with issues such as access for emergency services or problems with locks. I was concerned to hear that the fire brigade had had to cut off a lock to gain access, and that there was then a period of several weeks when refuse disposal crews could not gain access. I did not think it was reasonable for so long to go by without refuse collection (particularly when there were issues with rats) and it was not clear to me what the arrangements for access by emergency services were.

4. Whilst the resident had my sympathy regarding problems caused by unauthorised boats and theft from the site, the presence of a mooring warden would not necessarily have prevented those problems. However I was

concerned by the difficulty he had in March/April 2010 in obtaining information about the arrangements for enforcement action regarding some unauthorised boats. It took a fortnight, and escalation to head office level, to obtain any commitment to act. If relevant signs were illegible because of graffiti, then arrangements needed to be made to clean or replace them.

5. Overall, British Waterways were quite entitled to review their policy on provision of wardens, as they did. I did not see anything to suggest that residents were consulted, and that was a pity as it might have helped improve mutual understanding of the issues. But I could not see that British Waterways were under any obligation to provide a warden service.

6. I did not find evidence of maladministration or unfairness in British Waterways' decision to carry on using gardening contractors at this site as elsewhere, and I did not uphold the complaint about electricity cards.

7. The resident complained about a particular problem with rats in summer 2009, and that advice given by a pest control contractor in August, to increase frequency of visits, had been ignored. He said that as a result he had had problems with rats on his boat which meant he needed to employ pest controllers himself. British Waterways were unable to supply the pest controller's crucial worksheet for August 2009, though they did provide some others, none of which recommended increased visiting. I would have expected British Waterways to be able to provide the crucial work sheet and, lacking that evidence, I thought it only fair to accept the resident's account and uphold this aspect of his complaint. I also thought that, as the pest controllers had suggested that composting and woodpiles were exacerbating matters, that information should have been discussed with residents.

8. I considered whether there was evidence that the decision to remove the warden service was not adequately reflected in the price thereafter. I could understand why the resident questioned that when, at around the time the service was lost, there was an 11.25% price increase. However, British Waterways had already taken a decision that the absence or presence of a warden should not affect the mooring rate, as the quality and maintenance should be up to standard in any event. I was surprised that it should be disregarded but I could see that, given the fairly limited role wardens were expected to take, it might well have an insignificant effect on the market rate alongside other factors. It was not within my remit to say exactly what the market rate for the site would be, with or without a warden, but I could see that there might have been valid grounds for the price increase.

9. However I did identify ways in which the service offered at the site was not entirely up to standard on occasions since the warden was lost. In my view those amounted to maladministration causing injustice to the resident and I upheld the complaint to that extent.

10. I recommended that British Waterways:

1. in respect of the delay in refuse collection, pay £30 compensation to any residents who were living at the site in April/May 2010;
2. explain to residents what the arrangements now were for access for emergency services to the site;
3. make sure that residents were fully informed about who to contact about problems from unauthorised moorers at the site and what the arrangements are when the usual contact was on holiday or during holiday periods;
4. either clean any existing signage about unauthorised mooring to ensure it was legible, or provide new signage;
5. liaise with residents and pest controllers to look for ways to work together to tackle the problem with vermin;
6. refund to the resident the cost he incurred in employing pest controllers if he produced to me evidence of the amount he spent.

Case No 502 – handling of mooring application

1. A man complained when he was refused permission to moor his boat on the offside of a canal adjacent to privately owned land. The landowners already moored one boat there and British Waterways had explained that their policy restricting development of online moorings made a possible exception only for a single boat at each residential property. The complainant raised various arguments about why that rule should not apply here, and complained about how matters had been handled. But I could not see any grounds to criticise British Waterways for the way they had handled and considered the request. I did not uphold the complaint.

Case No 509 – delay in implementing actions regarding conditions for houseboat certificates, promised previously

1. Mr J complained to British Waterways about their interpretation of the term 'houseboat' (as derived from the British Waterways Act 1971) in their 2008 licence terms and conditions. The conditions referred to houseboats not being used for navigation and normally having no means of propulsion. Mr J felt that those terms were incorrect, particularly in the light of references in the British Waterways Act 1995 to certificates for houseboats which were being moved from place to place being deemed to be pleasure boat certificates or licences. In January 2010, in a decision at stage 2 of the complaints procedure, British Waterways accepted that there was some limited room to relax the houseboat conditions, so as to permit occasional and limited cruising. They said they would draft some revisions to the conditions and copy the draft to Mr J (and others) before implementing them. When, by late June, matters had not been concluded and no timetable for implementation had been given, Mr J complained to me about the delay.

2. In July British Waterways said that they still accepted that the conditions should be changed but there were 'ramifications' which they regretted had not been appreciated until recently. In August they suggested different wording for the revised conditions from that put forward previously, and they also sent a draft of a new mooring agreement for houseboats, which

contained some significant new terms not related to the issues Mr J had raised. They invited comments from Mr J on both items, and said they trusted that dealt with the issues I had taken up. I questioned whether, and if so why, they were now linking the proposed changes to the mooring agreement with the original complaint made by Mr J, and said I felt an apology would be appropriate regarding the failure to identify earlier the issues which had caused the delay in progressing the resolution of Mr J's original complaint.

3. As a result of my intervention British Waterways agreed to apologise to Mr J and that they would separate the original issue of the licence conditions from the new proposed changes to the mooring agreement, and consult on the licence conditions within six weeks, hoping to implement changes in December. I could not see that I could achieve more than that and was content to regard the original complaint as resolved

Case No 510 – restriction of use of moorings, and dealings with private pleasure boaters

1. Mr K complained that British Waterways were unreasonably restricting use of moorings at lock and water points, and in certain settlements, to particular businesses, permit holders, and charities, and that private pleasure boaters who used these moorings were routinely threatened with denial of licence, homelessness and destruction of property.

2. British Waterways had given details of the extent to which previous visitor moorings had been allocated to the organisations named, and the proportion of the total visitor moorings in the area involved. I had no doubt that British Waterways had the power to allocate moorings to particular organisations in that way, and they had put forward reasonable explanations for why the particular allocations were made. Mr K suggested that it might be fairer 'to all' if charity/business boats were given moorings away from busy water/toilet points. But I pointed out that British Waterways had to weigh up the needs of all involved, and that I was sure the charity/business boats would *not* think that what Mr K suggested was fairer to them, or those who use their services. I had not seen evidence that matters had been considered in an unreasonable way.

3. I could not see that Mr K had given British Waterways any details of 'routine threats' being made to him: so I really could not expect them to respond in any more detail than they had done. I hoped that some, if not all, of associated legal issues mentioned by Mr K would be settled during the course of a Court case he mentioned. But I could not resolve those issues about disputed points of law. I did not uphold Mr K's complaint.

Case No 515 – response to concerns about effects on neighbouring landowner of visitors to British Waterways site

1. A landowner was concerned that visitors to a site owned by British Waterways were straying onto the landowner's property from public footpaths or access routes and causing various problems. British Waterways had been

unwilling to improve signage to the site or take other action: they had said that the problem was one for the landowner to resolve.

2. I visited the site whilst in the area and found a surprising lack of effort by British Waterways to point visitors in the right direction: an existing glass-fronted information board did not even contain a map or directions to the area of particular interest to many visitors. Following queries I raised and some other developments, British Waterways changed their position and said that they would now prepare a site management plan which they would discuss with stakeholders (including the landowner). With the agreement of the complainant I said that I could be content to regard the matter as resolved, assuming the landowner was involved when the plan was developed and the issue of signage was properly considered.

Case No 516 – power to require licence for boat moored at an ‘end of garden’ mooring on a river waterway

1. Mr L moors his boat on a river waterway at the bottom of his garden. He believes that, as he has riparian rights, no licence is required during the winter when the boat remains stationary at the mooring. British Waterways accepted that he did not require a mooring permit but argued to him that, in accordance with Section 5 of the British Waterways Act 1971, he still required a licence to keep the boat on the waterway. They accepted that that Section only applied to the main navigable channel of the waterway, but said that they interpreted ‘main navigable channel’ as referring to the whole width of the waterway.

2. I pointed out that that interpretation of ‘main navigable channel’ was not the one British Waterways had applied previously when dealing with complaints about lack of maintenance under moorings. Then they had argued that, as their maintenance obligations in the Transport Act 1968 applied only to the main navigable channel, they were not obliged to dredge under moorings, only the central part of the waterway. British Waterways accepted that my comments were valid. However rather than as previously relying on Section 5 of the 1971 Act, they now referred to Section 13 of that Act, which includes a requirement for houseboats kept on ‘inland waterways’ to have houseboat certificates. They argued that the area where Mr L’s boat is moored is an inland waterway within the meaning of the relevant part of the Act because that part of the waterway was still ‘under their control’. I queried with British Waterways the basis for that view, and they sent me various information about legislation relating to the particular waterway. I gave Mr L the chance to comment on that. Each party raised various points of law.

3. If it is clear to me that British Waterways are acting outside the law then I will regard that as maladministration and uphold a relevant complaint. However if the correct interpretation of the law is not entirely clear, then I will not be able to resolve matters: as only the Courts can give definitive interpretations of the law. Although in this case, British Waterways accepted that my initial concerns were valid, unfortunately (having considered matters

in considerable detail) the legal position remained unclear to me. I could not see that further enquiries would be likely to change that. To reach a decision on the complaint I would have had to make my own interpretation of significantly disputed and debatable points of law. I decided therefore that I was unable to make any finding on the complaint.

Case No 517 – need for dredging

1. This complaint was about problems at a mooring site, operated by a local landowner, where it had become difficult to access the site because of a shoal of silt which had built up alongside the outer edge of the moorings, being swept towards the moorings by passing boats. The complainant, who had until recently moored at the site, wanted British Waterways to remove the silt or failing that, to collaborate with the mooring operator to find a solution. I accepted the complaint as one where the complaints procedure had failed in its operation after delays and failure by British Waterways to respond to some complaints correspondence.

2. British Waterways apologised for the problems the complainant experienced in using the complaints procedure, and explained what they had done to try to prevent a recurrence of such problems. I regarded that part of the complaint as resolved.

3. British Waterways accepted that dredging was required and were hoping to do it in 2011-12, if funding was available. Since the shoal did not apparently affect use of the main channel, only the moorings, the maintenance obligations in the Transport Act 1968 did not apply. There was no evidence that the delay in dredging was due to maladministration or unfairness, but rather the consequence of difficult decisions which had to be made about priority for the use of scarce resources. I did not uphold this aspect of the complaint.

4. The complainant put the mooring operator in contact with me. I advised them of their right to make their own complaint if the problems were significantly affecting the business and British Waterways would not take that into account in setting the rate for the business's mooring licence.

Case No 518 – issues relating to tenancy and possible sale of a house

1. Mr M and his family lived in a house belonging to British Waterways for over 10 years. Over a period of three months they developed rent arrears (which they explained were related to problems over a bank account). British Waterways first began legal proceedings to recover the debt and then (they later said, because they wished to sell the house) proceedings to seek repossession of the property. The matters covered in the court cases were outside my jurisdiction.

2. I considered, but did not uphold most of Mr M's complaints about the handing of matters leading up to the legal action and his complaint about how

British Waterways responded to a suggestion he might buy the house. I did however find British Waterways guilty of maladministration in the way they communicated their decision to seek possession. Their usual practice when planning to dispose of a property was to write to the tenant and to offer a discussion before starting any legal action. In Mr M's case they simply asked a solicitor to send a formal notice, which came completely out of the blue without any explanation, three days before Christmas. I recommended that they should offer an apology for the stress caused by the way the decision was initially communicated.

Cases No 524 and 542 – access for residents along gated section of towpath

1. Two residents of a building adjacent to a canal complained that British Waterways had not insisted that a padlock was removed from a gate on the towpath so they could access their homes via that route. They believed the padlock had been placed there by a tenant of British Waterways occupying an adjacent site. I did not uphold the complaint. The residents had no right of access via the towpath and the decision by British Waterways, simply to offer to facilitate a meeting between the parties, rather than try to insist on removal of the padlock was a discretionary decision of a sort which a number of organisations might reasonably have taken in a similar situation.

Case No 532 – requirement for boat safety certificate, mooring and licence fees

1. Mr N disagreed with a boat safety scheme examiner's decision that work was needed to his boat before a safety certificate could be issued. Despite some work to the boat, several more examinations by more than one examiner, and efforts from some British Waterways staff in Scotland to assist Mr N in obtaining a certificate, he had still not provided one to British Waterways two years later. Eventually British Waterways said that without a certificate his boat would be removed from their waters or not allowed to return. Mr N complained about the handling of matters by British Waterways.

2. The correspondence I saw showed that British Waterways had been remarkably patient in allowing Mr N to remain at his mooring for so long without a safety certificate, and that some of their staff had gone out of their way to try to help him resolve matters. They did explain about the need to deal directly with the Boat Safety Scheme regarding his concerns about the examinations of his boat. In the end it was not British Waterways' responsibility to help him get a certificate and they were under no obligation to allow him to remain in their facilities without one.

3. Mr N also complained about falsification of his licence/mooring accounts and mismanagement of direct debit payments. His complaint seemed to be that that British Waterways were wrongly trying to return money to him, which they believed he had overpaid: but he thought there had been no overpayment. I could not see that that was the cause of any injustice to him, and therefore saw no grounds to pursue matters.

Case No 537 – land ownership and works to canal bank

1. The complainants' garden is adjacent to a canal. In 2007 British Waterways gave their agreement to the complainants carrying out works along the edge of the canal and those went ahead in 2008. Subsequently a dispute arose between the complainants and British Waterways about the exact boundaries between the land the two parties owned. The complainants felt that British Waterways had deceived them in various statements about land ownership and wrongly withheld information from them before they went ahead with the works to the canal bank.

2. On the question of whether the complainants had been misled, I found that British Waterways had made it clear to the complainants before the works went ahead that they believed they owned part of the disputed land. The Land Registry were now involved regarding the dispute about land ownership and I said that they (or the Courts) would be the more appropriate body to deal with that. After I spoke with one of the complainants we agreed that, since resolving the land ownership issue was their priority and I could not do that, I would not take matters further. Nevertheless the complainants said that my analysis of the facts had been helpful.

Case No 542 – see Case No 524

Case No 552 – management of canal outside public house

1. Mr P complained about various aspects of the management of the canal outside his public house. In particular he was dissatisfied with British Waterways' refusal to agree to his proposal that he should lease the adjacent visitor moorings. The request had been considered, but British Waterways felt that they needed to decide on a national policy on the matter before taking matters further. This did not seem an unreasonable approach to a matter such as this which was within the British Waterways' discretion. I did not think that further investigation by me would achieve more on any of Mr P's other concerns than had already been achieved through his complaint to British Waterways.

Case No 559 – statement in National Boating Brief

1. Ms Q complained that that a statement in British Waterways 2010 Autumn National Boating Brief, about a pending court case relating to continuous cruising, was misleading in that it implied the case would set a legal precedent when that was not so. I did not think the statement went as far as implying that a formal legal precedent would be set but that, although mention of the case did imply it might be of some future national significance, that was correct. I did not uphold the complaint.

Ms Q also complained that a statement made by a member of staff in private correspondence with her was legally incorrect. Since I could not see this was the source of any injustice to Ms Q, who remained sure of her own legal opinion, I declined to pursue matters 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 by calling them on 01923 201120, or by email to enquiries.hq@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.

