



THE WATERWAYS OMBUDSMAN



Annual Reports of

The Waterways Ombudsman Committee

and

The Waterways Ombudsman

2022-2023





Annual Reports of The Waterways Ombudsman Committee and The Waterways Ombudsman 2022-23

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ANNUAL REPORT OF THE WATERWAYS OMBUDSMAN COMMITTEE 2022-23

Chair's Report

The Committee was established in 2005 to oversee the operation of the Waterways Ombudsman scheme (the Scheme) and the independence and accessibility of the Ombudsman. This report covers the period April 2022 to March 2023.

I am pleased to present my third Annual Report as Chair of the committee.

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.

There have been four committee meetings in this reporting period, in June, September, December 2022 and March 2023. Three meetings were held via Zoom and the September meeting was in person. The Committee continues to work in a hybrid way as it has proved to be a more efficient and effective way of discharging its duties. The Committee now use Diligent Board Books to share information electronically and has built up a library of resources.

The Committee has a responsibility to ensure that the Scheme is effective. This year we have conducted a Peer Review, which is available to read on the website [here](#) considered options for new business and marketing and completed a recruitment exercise. We had a presentation by the Trust on its new Customer Relationship Management system and how they have used the learnings from Ombudsman complaints to improve the customer journey. We also heard about Continuous Cruising and how the Trust monitor it. Unfortunately, we have not benefitted from a user representative from the Canal & River Trust this year. We are actively seeking someone and to make the position stronger and more attractive we have agreed to extend the term of the appointment to run in tandem with their Trust term of office.

As Chair I consider any complaints about the service or process followed by the Ombudsman, I am pleased to report this year there have been none. An appeal was made against the High Court's decision to strike out last year's application for judicial review (in respect of an Ombudsman decision from 2021) – however this was unsuccessful.



Committee Changes

We have recruited again this year and welcome two new independent members, Alison Jack and Warren Seddon. They are both very experienced in the area of complaint handling and we are confident they will have a positive impact on the committee and the work we do.

I'd like to record my thanks to Lisa Stallwood, who resigned in December 2022, for her work on the Peer Reviews and for her valued contribution to discussions. I would also like to record my thanks to Jane Brothwood, whose term of office comes to an end in May 2023, just outside this reporting window, for her work on the Peer Review and support during the recent recruitment process.

Also, thanks to Dave Mendes Da Costa, whose time as a waterway users representative ended in the summer who brought an invaluable perspective as a regular waterway user. We are currently working to replace this key role.

David Greer handed over the baton as an Observer for Avon Navigation Trust to Geoff Crane and more information on his background can be found later in this report.

Finances

The Committee appoints the Ombudsman, and the Committee is funded by its waterway members to meet the costs of this service. All expenditure has been authorised for payment. The Ombudsman charges for services on a time and materials basis and is not an employee of the Committee or the Canal & River Trust.

The total cost of the Ombudsman service in 2022-23 was £30,572.12.
This is made up as:

Ombudsman pay: £26,176.60
Ombudsman expenses: £4,395.52

Ombudsman expenses include the costs to facilitate home working, but the major expenses are the payment of annual membership fees, such as the Ombudsman Association, Chartered Trading Standards Institute, and Information Commissioners Office fees.

There were additional costs associated with the Judicial Review. The Court made a costs order against the complainant in respect of legal costs incurred by the Ombudsman in defending the unsuccessful application, which we intend to pursue.

Independence

The Scheme continues to be a member of the Ombudsman Association, a requirement of which is that the Committee is independent. The Scheme continues to be approved by the Chartered Trading Standards Institute, this certification means that we meet the requirement of the EU Alternative Dispute Resolution Directive and the related UK Regulations.



New Business

We continue to seek interest from other waterways which are not part of a statutory Alternative Dispute Resolution Scheme. A larger scheme provides the opportunity to ensure that more waterway users have access to a free user-friendly complaints resolution service. This is a work in progress and will continue over the next couple of years.

Looking forward

The Committee remains focussed on ensuring that an effective Ombudsman Scheme is made available to those who use the services provided by its members or any of their subsidiaries, or who may be affected by their activities.

This will be my final report as my term of office comes to an end early in 2024. We will begin the process of identifying a successor and at least one other new member during the autumn of 2023.

Karen McArthur
Chair Waterways Ombudsman Committee
September 2023





Annex 1

Committee members and their profiles.

The Committee members at 31 March 2023 are:

Independent Members

Karen McArthur [Chair]
Alan Collins
Jane Brothwood
Warren Seddon
Alison Jack

Observers from Canal & River Trust

Tom Deards
Janet Hogben

Observer from Avon Navigation Trust

Geoff Crane

User Representatives from Canal & River Trust

Vacant

Member profiles of the Ombudsman Committee as at 31 March 2023

Chair Karen McArthur



Karen has a portfolio focusing on consumers and protection across a range of sectors including, transport, housing, water, energy, data, products and services, setting and upholding standards.

In addition to NED roles she is Chair/Lay for a number of regulatory bodies.

Other Independent Members

Alan Collins



Alan is a partner at Hugh James solicitors and is a specialist in complex personal injury and clinical negligence cases, including child abuse cases in the UK and abroad. He has experience of representing interested parties before public inquiries including the Independent Jersey Care Inquiry, and IICSA. He was the advocate to the People's Tribunal (UKCSAPT) which, in 2016, presented its report to the UK Parliament. He is a fellow of APIL, and the treasurer of ACAL. Alan is regularly called upon to comment in the media on legal issues and is also a speaker at conferences:

UNICEF; La Trobe University; University of Wales; Law Society of Scotland; Strathclyde University; and Dyfed-Powys Police.

Jane Brothwood



Jane held a range of senior leadership roles in HM Revenue and Customs. Most recently, as Head of the Adjudicator's Office, investigating complaints about HM Revenue & Customs, the Valuation Office Agency and Home Office Windrush Compensation Scheme and promoting a culture of learning from complaints. In addition, Jane was also chair of the Ombudsman Association Casework Interest Group, sharing best practice and learning from Ombudsman schemes.

She is chair of Governors for a local primary school and is a Foundation Governor for a local Church of England primary school federation. She has recently been appointed as a lay panel member for the Teacher Regulation Agency.

Alison Jack



Alison works in a management role at the Scottish Public Services Ombudsman (SPSO). Her team independently review welfare benefit applications and promote learning and improvement in decision making. She is also an active member of the organisation's Wellbeing Action Group and Service Improvement Forum.

Prior to joining the SPSO, she worked for a local authority, managing an advice service, and was a trustee for Money Advice Scotland. She has a keen interest in consumer rights and promoting access to justice.

Warren Seddon



in the UK Civil Service.

Warren joined the UK's Information Commissioner's Office in May 2021 where he leads on work related to the Freedom of Information Act and Environmental Information Regulations. This includes oversight of the casework teams that make decisions on complaints about the handling of information requests by public bodies, as well as all related policy, enforcement and upstream regulation work. He joined the ICO from his role as Director of Strategy, Insight and Communications at the Parliamentary and Health Service Ombudsman, where he had been since 2017. Before that he was at the Electoral Commission and held a number of roles



Observers appointed by the Scheme Members

Tom Deards is the Canal & River Trust’s Legal & Governance Director and company secretary. He has responsibility for the legal and governance functions of the Trust. He is a qualified solicitor who joined the Trust’s legal team in 2007, having trained and qualified into the asset finance team at City law firm Clifford Chance, before going on to complete a Legal Masters at UCL in Environmental Law, whilst gaining experience working as an environment and planning lawyer in local government. Tom is the Trust’s Company Secretary and Data Protection Officer.

Janet Hogben was appointed as a Trustee Director of the Canal & River Trust in September 2016 and is Chair of the Trust’s Remuneration Committee and is a member of the Infrastructure Committee. Janet was previously the Chief People Officer at EDF Energy, a role she retired from at the end of 2017. Her earlier career spanned many functions and leadership roles in various blue chip companies.

Janet also sits as a Non Executive Advisor on the Heart, Lung & Critical Care Group of Guys and St Thomas’ Hospital Trust.

Geoff Crane representing Avon Navigation Trust. Geoff has been a trustee, council member, Reach master, Patrol Officer, Volunteer and member of the Avon Navigation Trust (ANT) since 2018. Before retirement in 2019, he worked for NFU Mutual and, for many years, was involved in managing Insurance Ombudsman complaints. He believes strongly in the importance of excellence in consumer care and is a firm believer in the principles of equity and natural justice. He is delighted to have the opportunity to contribute to the work of the Waterways Ombudsman Scheme to further ANT’s commitment to maintaining high standards for all users of the River Avon.

Attendance at meetings

| Member | June 2022 | September 2022 | December 2022 | March 2023 |
|----------------------|-----------|----------------|---------------|------------|
| Sarah Daniel | Green | Green | Green | Green |
| Karen McArthur | Green | Green | Green | Green |
| Alan Collins | Green | Red | Green | Green |
| Lisa Stallwood | Green | Red | Red | White |
| Jane Brothwood | Green | Green | Green | Green |
| Allison Jack | White | White | Red | Green |
| Warren Seddon | White | White | White | Green |
| Tom Deards | Green | Green | Green | Green |
| Janet Hogben | Green | Green | Green | Green |
| David Greer | Green | White | White | White |
| Dave Mendes da Costa | Green | Red | White | White |
| Geoff Crane | White | Green | Green | Green |

Key: Green - attended, Red – apologies, White - non member



ANNUAL REPORT THE WATERWAYS OMBUDSMAN 2022-23

Welcome

I am delighted to present my annual report as Waterways Ombudsman which covers the period 1 April 2022 to 31 March 2023.

The Waterways Ombudsman is the final stage for complaints about the Canal and River Trust and the Avon Navigation Trust, our Members. We investigate complaints that have been through the Member's full complaints procedure. This gives them the chance to put things right. This year all enquiries and complaints were about The Canal & River Trust so references to 'the Trust' in this report refer to that member.

The ultimate aim of any Ombudsman is to make themselves redundant, as the organisation they investigate learns from mistakes and improves the standard of service provided. When I did not open a new case from 31 March 2022 until 15 August 2023, I thought I had achieved that aim. However, fully escalated complaints did start to arrive, albeit at a reduced number. It will be interesting to see if this trend continues and if it is a reflection of better front end complaint handling or complaint fatigue.

This year I have noticed an increase in complaints which are outside of my remit because they have been dealt with via the Trust's legal process. These include complaints about the removal of boats which have followed the Section 8 removal process, about insurance claims for damage, said to be caused by the Trust's assets and about public consultations. Complainants are aggrieved that I am unable to assist them and often there is a lot of correspondence between us. There are a number of reasons why I cannot get involved; if a decision has been made by the Courts that is a higher legal authority and it is not my role to question it; my rules do not permit me to investigate complaints that have not been through the Trust complaints process or there may be another body that is better equipped to deal with the matter. Some customers see me as the last resort and are understandably disappointed when I am unable to assist them. These contacts are frustrating for both sides but are inevitable when the complainant feels there is nowhere else to go.

As always, I'd like to record my thanks to the staff at the Trust who assist in the provision of information and provide administrative support and to the Committee members who make the role a less lonely place to be.

We continue to be open to the prospect of new Members joining the Scheme. Joining an established Ombudsman scheme shows a commitment to providing a high standard of customer service and a willingness to learn from complaints to improve performance.

I'd like to record my thanks to Lisa Stallwood and Jane Brothwood for their work on the Peer Review which is an incredibly helpful exercise for me and to Dave Mendes da

Costa and David Greer for their valuable contribution to the Committee over the last year.

Sarah Daniel
Waterways Ombudsman
September 2023



Casework

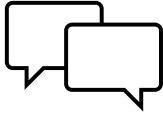
The majority of the Ombudsman's role is casework. As Ombudsman, I am responsible for all aspects of the work, from the initial enquiry to the final decision. As no complaints were received about the Avon Navigation Trust all references to 'The Trust' are about the Canal & River Trust. The work can be broadly divided into enquiries and investigations.

Enquiries

An enquiry is any kind of approach, regardless of whether it is something which will result in an investigation. Details of how to contact the Ombudsman are provided on the scheme website as well as in the complaints procedure of the member schemes. Details are also readily available via an internet search, which is where the majority of contacts come from.



Enquiries



We take enquiries by email, phone or letter. This year we had a total of 54 enquiries, 34 by email, 19 by phone and 1 by post. Of the 54 enquiries received, 8 had not started the complaints process, 24 had not completed the complaints process, 13 were not about the members, 4 were outside jurisdiction and 5 were accepted for investigation.

Referrals



With any enquiry I look at the information provided and decide if it is something I can help with. If the complaint is not about a member or not in jurisdiction I will assist by providing helpful information and referring the enquirer to the most appropriate body. If the Member's internal complaints process has not started or been completed I will refer the enquirer back to the Member.

Early Resolution



I always seek to resolve complaints at the lowest level possible. To do so, I often make informal enquiries and requests for information with the Member to see if the matter can be resolved without escalation. When I refer back to the Member they generally advise if and how the matter has been resolved.

Who is making enquiries and what are they about?

Everyone who made an enquiry was responded to within five days. Around half of enquiries come from boaters who are either part way through a complaint with the Trust or looking for further advice on matters. Some were experiencing issues while on the water, such as bridge closures, unhappy with the customer service facilities, towpath problems and some had issues with their licences, other boaters or mooring sites. The remainder are complaints from residents or businesses close to canals and unhappy with the behaviour of boaters or other towpath user or with the effect of the canals on their properties, for example, leaks or bank erosion.

This year there have been three complainants who were unhappy with the outcome of legal action taken by the Trust. Despite not being within my remit they were particularly time consuming and frustrating as they were very persistent in their efforts to seek a resolution outside the process.

If complainants have not started or completed the Internal complaints process I will advise them I am unable to help at this stage and provide details for how to access the process. If the matter is particularly urgent or it seems to have got stuck somewhere in the system, I will forward them to the Trust. Generally speaking, the Trust respond and take ownership of the matter advising me how it has been handled and I do not hear from the complainants again. As the role of the Ombudsman is to consider complaints that have been through a formal process without resolution, I am satisfied this is the right response. In most of the cases the issues are resolved quickly and even if the complainant is unhappy with the response, they are satisfied the issue has

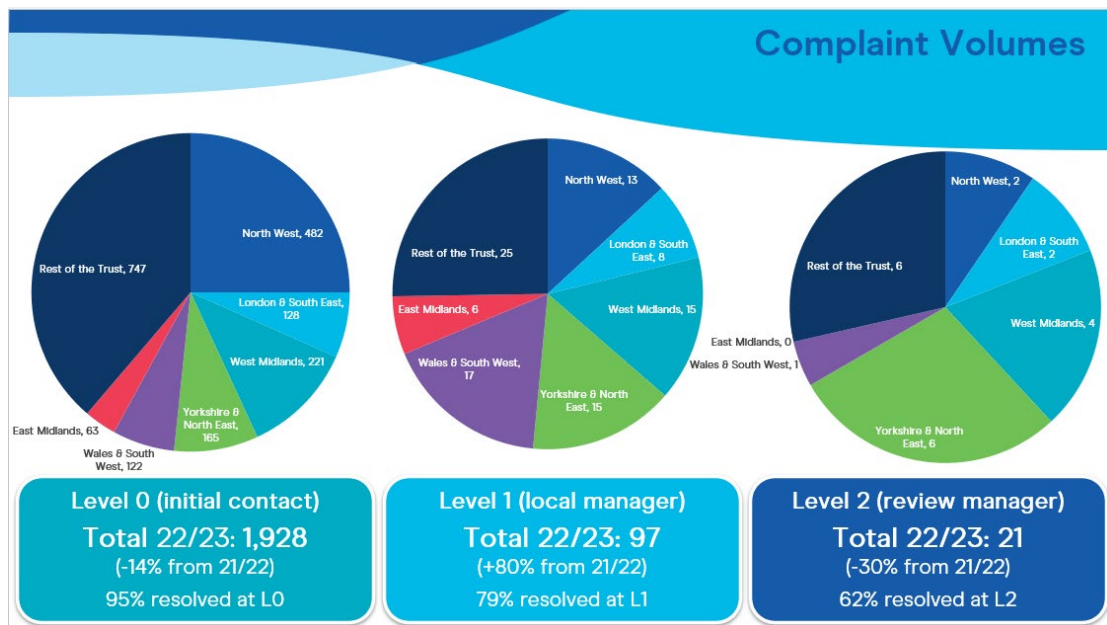
been properly considered. In some ways these cases could be classified as resolved by Early Resolution.

Five of the 54 enquiries were eligible for investigation. There was also a complainant who made an initial enquiry in February 2022 and completed the Internal complaints process and was accepted for investigation mid-May 2023. This year two of the accepted cases had been referred back to complete the ICP, the others had completed the process when they approached me. This indicates that when complainants are referred back to the Trust they are satisfied with the response they receive.


The Trust has provided details of the number of complaints it has dealt with through the formal complaints procedure over the last 5 years.

| Year | CRT 1 st Level | CRT 2 nd level | Concluded Ombud investigations |
|---------|---------------------------|---------------------------|--------------------------------|
| 2018-19 | 124 | 35 | 15 |
| 2019-20 | 110 | 31 | 7 |
| 2020-21 | 109 | 28 | 8 |
| 2021-22 | 54 | 33 | 11 |
| 2022-23 | 97 | 21 | 8 |

The Trust has also provided a more detailed breakdown of figures by Region and its three levels of contact. Level 0 is initial contact and the aim is to deal with the complaint there and then. If this is not possible it goes to level one where a formal response will be provided. If the complainant remains dissatisfied it will go to a senior manager for review and final decision, signposting to the Ombudsman if the complainant remains unhappy.



The Trust say it's very difficult to do any 'root cause analysis' because the variety of complaint reasons are so wide and subjects vary across the regions. This is reflected in the huge range of subjects that reach me at the enquiries stage and which makes it difficult when seeking to focus efforts on complaint reduction. However, there are general areas around customer service and communication which form the common



denominator of many complaints. Although it may be difficult, the Trust should not disregard the option of a targeted analysis of this nature in future as it may generate helpful learning for the Trust.

The Trust says pre-formal complaint (initial expression of dissatisfaction) numbers are reduced against last year, but overall contact was similarly reduced (down by almost 9% on last year). They explain that overall customer satisfaction scores remained consistent at 75.16% (up by 0.21%) but they believe the impact of its new customer management system continues to offer an improved experience with 67.55% of cases resolved at the first point of contact (up by 10.79% on last year) and they met their five-day service level for resolution in 79.67% of cases (up by 10.81% on last year).

The Trust feel that these statistics show its focus on customer service performance visibility and continued conversation about the customer experience (including at executive level) demonstrate its increased efforts to get things right for its customers.

The Trust says the 80% increase in Level 1 complaints is difficult to understand, particularly when considering the 30% reduction in escalations to Level 2. It reports it may be explained by greater rigour in the recording of complaints following some improvements to the complaint module in the system or it could be that colleagues are getting better at recognising when a customer's dissatisfaction should be handled as a complaint by a responsible manager. The reduction at Level 2 could be due to an improved responses at Level 1, I have noticed an increased in the amount of detail provided.

That said, the Trust should be on guard against complaint fatigue, when complainants simply stop reporting issues because they feel nothing changes or the process is too onerous. Complaints are always a great source of information from users of the service and its important to check back and ask customers if they are happy and satisfied with the response they have received at the first level and have not simply given up.

Investigations

Investigations are undertaken when the complainant is unhappy with the Trust's final response. Complainants have 12 months to bring the complaint to me but generally they do so within a month or two.

Once accepted for investigation, I gather evidence from both sides, produce an initial report, which both parties can comment on, before producing a final report. If the complainant accepts the final report any recommendations are binding on the Trust.

This year I opened five Investigations and closed eight. There were four investigations open at the start of the year, one of which was completed in April, one in May and two in June 2022. One complaint remained open at the end of April 2023 which was closed in May 2023. Although the numbers do fluctuate, this is lowest number of opened investigations in a year. I think this may be maybe due to the number of complaints referred back to the Trust, which they took ownership of and resolved to the complainant's satisfaction.



Opened Investigations

| Year starting 1 April | 2018-2019 | 2019-2020 | 2020-2021 | 2021-2022 | 2022-2023 |
|-----------------------|-----------|-----------|-----------|-----------|-----------|
| Opened investigations | 15 | 7 | 10 | 12 | 5 |

This year seven of the eight concluded complaints came from householders who live next to the canal. Two were about the refusal to grant an end of garden mooring, one complaining the canal eroding his garden, one said that the canal was leaking into the property, one about an overgrown tree overhanging the garden and one about failure to upkeep the towpath backing onto a garden. There was one complaint from a resident about an overstaying boater burning toxic smoke and affecting his enjoyment of his garden and finally just one from a Boater who complained about the Trust's new towpath vegetation and mowing regime.

This reflects a change from previous years when more complainants were boaters and maybe reflects an improved relationship between the Trust and Boaters. Complaints from householders can be emotive as they live with a constant reminder of the problem which is literally on their doorstep and they generally have no previous or ongoing relationship with the Trust.

Of the eight concluded complaints, one was upheld and one was partially upheld, both were accepted by the complainant. Six were not upheld, one was accepted and five were declined by the complainant. The Trust was required to take some further action in the accepted complaints and all the remedies were fulfilled in the permitted timeframe.

Recommendations to the Trust

I made a number of recommendations to the Trust which included;

- reviewing how moorings in a particular area are used;
- providing more education to boaters about the danger of burning toxic smoke to themselves and others;
- improving communication with complainants and checking that any messages have been understood by the recipient;
- to complete some work on tree (although it was later confirmed this was refused by the Local Authority because of a Tree Preservation Order), and
- to apologise for the time spent dealing with an issue because of miscommunication and vague messages.

Fulfilment by the Trust of remedies

I was pleased to see that as a result of my recommendations the Trust introduced some new initiatives particularly in respect of the criticisms about communication. In these cases, Trust staff seem loathe to deliver bad news, which then extended the process and gave the complainants false hope the Trust has taken some decisive action.

The Trust commissioned a day's training for every customer support advisor currently working for the Trust in its six regional customer support teams. The bespoke training is being delivered through the Institute of Customer Service and my feedback from

complaints was specifically shared with their academy team to ensure that the importance of having good quality, consistent and clear communication with customers is addressed during the day. This demonstrates the impact of having an external and independent Ombudsman reviewing complaints and will hopefully have a big impact for customers and staff.

The Trust has also discussed with its Boating & Customer Service Managers the recommendation and themes that have emerged recently from my investigations and decisions and asked them to raise this with their teams during their regular performance meetings with staff and to watch out for opportunities to address these behaviours when reviewing their work or responding to enquiries that are escalating. This is very encouraging and again demonstrates the benefits of the Ombudsman role in learning from complaints.

Once accepted by the complainant the Trust generally has 28 days, or longer, if necessary, to fulfil the remedies. In some cases, because of liaison with other bodies this can take longer, as it did with the tree, and the review of the moorings is on-going.





Eligible cases for investigation which were completed during the year 2022-23

The case summaries for all investigations are published on the scheme website when the complaint process is complete. The aim is to provide examples of the types of complaint which can be investigated, to aid an understanding of how they might be investigated and highlight areas where changes have been made.

The list below provides a headline description of the complaint. The full summaries are available to read in the report appendix or on the websites, [here](#).

List of investigated cases

Case 1246 – a complaint about the refusal to grant an end of garden mooring.

Case 1241 – a complaint about the use of the towpath by fishermen and the Trust's reaction when the issue was raised.

Case 1243- a complaint from residents of a canal side property that the canal wall was leaking into their underground garage.

Case 1232 – a complaint about the overstaying boats and their burning of waste construction wood creating toxic smoke.

Case 1290 – a complaint about the decision not to renew an end of garden mooring upon the sale of a property.

Case 1236 – a complaint about the ownership of a tree on the boundary of the towpath and a residential property.

Case 1264 – a complaint about how the Trust dealt with concerns about erosion of the canal bank and removal of litter at a residential property.

Case 1263- a complaint about the changes to the Trust towpath mowing regime.

Timescales and Key Performance Indicators.

I met all the timescales and key performance indicators set by the Committee for responding to correspondence and dealing with complaints. They are,

- acknowledgement or response to initial letter, email or telephone call within a week of contact in 90% of cases,
- confirmation of whether the complaint is within jurisdiction and has fully completed the complaints process of the organisation complained about within a week of contact in 90% of cases,
- investigations completed within 90 days of the Ombudsman receiving the complete complaint file (except for cases of a highly complex nature).

Time taken to complete investigations.

Under the ADR Regulations¹ the Ombudsman is required to complete cases within 90 days except where they are complex. The Regulations apply only to consumer complaints, and not those made by businesses. That period starts from the date on which the Complete Case File (CCF) is received, which is the evidence from the parties, as well as any third party reports or expert input, needed to complete the investigation. It ends on the date on which the final report is issued, having in most cases previously issued a draft report on which both parties had the opportunity to comment. The time line includes response times from both sides.

At the outset of the investigation, it is not always clear what information is required and as the investigation progresses sometimes more information is needed. This can sometimes mean that complaints take longer than expected to resolve.

This year the eight cases were closed in a range of days from 32 to 64 with the average of these being 49 days from CCF to final decision.



¹ <http://www.legislation.gov.uk/ukxi/2015/542/contents/made>



Case Summaries

Available to view on the website at, [2022-2023 case summaries | The Waterways Ombudsman \(waterways-ombudsman.org\)](https://www.waterways-ombudsman.org/2022-2023-case-summaries)

Case 1246 – a complaint about the refusal to grant an end of garden mooring.

Mr and Mrs F purchased a property believing it had the benefit of an end of garden mooring. They applied for the licence for a boat which they jointly owned with a friend. The Trust refused the licence as it failed to meet the requirements as the applicant was not the landowner and could not provide evidence of their ownership extending to the water's edge.

Mrs F said the Trust had been inconsistent in its responses and treated them differently from their neighbours in refusing the licence. There were some delays in the Trust reaching their decision and perceived inconsistencies in replies. The restrictions imposed because of National Lockdowns and furloughed staff added to the delays.


The matter was further complicated when one of the boat owners took up residence on the boat to isolate himself because of the pandemic. Mr and Mrs F believed this to be the reason for the licence refusal and argued it was a Local Authority planning matter and not something the Trust should be deciding on. However, it was simply that the application did not meet the criteria of the Trust's On Line Mooring Policy, which has no right of appeal. I was satisfied the policy is clear, that to grant permission the land adjacent to the canal has to be owned by the applicant. Mrs F used the complaints process to challenge the decision but provided no evidence to substantiate her claim that she had been treated unfairly. I was satisfied that the decision is in line with Trust policy.

Once the application had been refused there was an expectation from the Trust that the boat adhere to the licence conditions of a boat without a home mooring, that is to continually cruise. The boat did not move and therefore the Trust began enforcement action. This process took longer than usual because of the time taken to consider the application, national lockdowns and the ill health of the local support officer

I did not uphold the complaint that Mr and Mrs F were treated unfairly. There were some inconsistencies in the reasons provided for the refusal of the mooring and Mrs F was under the mistaken belief that the occupancy of the boat was the problem when it was simply the location. However, as she had benefitted from using the mooring, without having permission to remain in situ, I did not require any further action by the Trust. If Mr and Mrs F and their friend wish to retain their boat without a home mooring they will be required to adhere to the rules of continuous cruising and there will be an expectation that the boat is not moored at the property for any length of time.

Case 1241 – a complaint about the use of the towpath by fishermen and the Trust's reaction when the issue was raised.

A complaint by Ms C on behalf of her parents whose garden backs onto the canal towpath. They were unhappy that the Trust had granted fishing rights to a fishing club along the stretch of canal, complaining that the fishermen were rude, untidy,



disrespectful and upsetting the residents. Ms C said the local residents had always kept the towpath in good condition, mowing the grass and planting to make it attractive for all towpath users. Some residents claimed that part of the towpath actually belonged to them and not the Trust. Following the complaints, the Trust visited the site and decided that it was not appropriate, safe or acceptable for the residents to be cutting the grass etc. The Trust wrote to the residents saying that the Trust would include the area in its mowing regime, that plants must be removed and that it would work with the fishing club to improve behaviour and positioning of fishing pegs.

I concluded that the Trust had demonstrated that it owns the land, it has followed its policy to promote and provide one of its core activities, angling and it has taken a decision, based on a health and safety risk assessment that the residents should not be undertaking any work on the path. The Trust explained this is because there are so many inherent risks to undertaking an activity so close to the water's edge and in an open public environment where other activities may be taking place with members of the general public in close proximity. The Trust could not knowingly permit the situation to continue on its land and not requesting the residents to desist from cutting the grass would imply the Trust consent or authority had been granted when it had not. I considered this to be a very reasonable argument and I did not uphold the complaint.


Case 1232 – a complaint about the overstaying boats and their burning of waste construction wood creating toxic smoke.

Mr D complained about the problems caused by overstaying boats, burning waste construction wood which creates highly toxic smoke. Mr D said the smoke regularly filled his home and many others in the neighbourhood. Mr D believed the ongoing burning practices in very close proximity to people's homes constitute an emission of smoke prejudicial to health under the Environmental Protection Act 1990. He argued it was within the Trust's power to substantially mitigate this threat, while accepting they lack formal statutory powers regarding smoke nuisance. Mr D said the Trust could, for example, prohibit certain burning practices as part of their licence conditions, and update their signage to reflect this. Mr D claimed the Trust's failure to take further measures is negligent and was creating a significant health risk to local residents, especially the many small children who live in the area. He wanted overstaying boats moved on, some of the moorings moved and the Trust to ensure it educates users on the dangers of toxic smoke.

The Trust explained that it has no legal enforcement powers in relation to smoke nuisance, they lay with the Local Authority (LA). It says it is committed to working with the LA and boaters to highlight the dangers of burning fuels which produce smoke and toxic fumes for the boater and residents alike. The upcoming introduction of smoke control areas by LAs will see more emphasis placed on this issue and make enforcement easier for the LAs. The Trust did not agree to a change to its licence conditions to include the banning of burning the wrong fuel type.

I concluded its argument that it has no power to enforce it is a valid one and, in many cases, it could be viewed as a disproportionately strong response for a boater seeking to heat their home in the cheapest way possible. The Trust says it is committed to increasing its educational programme about the dangers of the practise and working with LAs to improve signage in locations designated smoke control areas.

I recommended that the Trust uses the information gathered by its boat sightings to review how the mooring in this area is used to allow consideration to be given to the possibility of moving or removing the moorings closest to the apartment blocks. I also recommended that the Trust strengthens its message to boaters that the use of fuels which cause excessive and potentially toxic smoke is harmful to themselves and others and the Trust can use the general nuisance condition of the licence to take action.



Finally, I recommended that the Trust should continue with its commitment to increase its educational programme about the dangers of burning the wrong type of fuels and working with LAs when new smoke control areas are created to improve awareness and signage in those locations. I suggested inclusion in one of its Boaters' updates and in any direct communication with a boater where this issue has been specifically complained about.

Case 1243- a complaint from residents of a canal side property that the canal wall was leaking into their underground garage.

Mrs E raised the complaint on behalf of the residents of an Apartment block. She explained that the residents had first approached the Trust in 2016/17 to alert it to the seepage. The residents believed the Trust was responsible for the damage this was causing because it was not maintaining the canal wall sufficiently. Mrs E complained that there was maladministration by the Trust in the way it had dealt with their complaint. The Trust had accepted the delays in responding have been well below the expected standard and in 2020 advised the residents to contact the loss adjustors if they wished to pursue a claim for damages.


The investigation concentrated on how the matter had been handled as the residents believed the way this case was handled by the Trust had made the actual issue considerably worse and far more stressful than it needed to be.

I concluded that the Trust was correct to refer the residents to its Loss Adjustors with allegation that it was responsible for the water ingress at the property and that the Trust had not dealt with the correspondence and contacts in a timely and efficient way. This had extended the time to provide the residents with a definitive response that it is not responsible for the water ingress and will not be taking any action to stop it. The Trust maintained that it did provide the residents with such advice, but the continued contacts from the residents should have alerted it to the failures in its messaging. To recognise the stress and inconvenience caused to the residents in having to make repeated requests for information and contact over a period of years I recommended a goodwill gesture to recognise the time and trouble involved.

1290 – a complaint about the decision not to renew an end of garden mooring upon the sale of a property

A couple purchased a canal side property in 2011. They were attracted by the availability of a mooring and signed an End of Garden Mooring Agreement with the Trust. In 2022 they decided to sell the property and the Estate Agent marketed it with the mooring included in the particulars. Potential buyers contacted the Trust to confirm availability of the mooring. The Trust found that the mooring did not meet the requirements to be classified as an End of Garden Mooring and notified the Estate Agent to remove the mooring from the sales details.

The couple complained that the Trust should have contacted them rather than the Estate Agent, that the reasons given for withdrawing the mooring are unfair and unreasonable and the result is that the property has been significantly devalued. The Trust says there are no implied rights to moor on its canals, the Trust is the owner of the canal bed, and its permission is required for the exclusive right to occupy this water space. All mooring agreements are between the Trust and the customer, not the property, and cannot be transferred from one individual to another. Any new owner of the property, who also wished to moor a boat at this location, must therefore make a new application to the Trust which will be considered in line with the applicable policy. However, at this location, it said any application made would not meet the



policy requirements as the applicant will not own the land up to the waters edge (i.e. the land against which they intend to moor the boat) as it is the Trust's property.

The couple argued the mooring was historic and the Trust had given no indication during the years they lived there that it would not pass to any new owner. They were under the impression that it was associated with the property rather than the individual.

The Trust provided a copy of the original mooring approval letter from 2011 to demonstrate that they would have known that there was no legal right to moor and that no mooring was included within their Land Registry title for the property. The from sets out the terms of the mooring approval and point 11 states: *"mooring rights are not transferable with the sale of the property and must be re-applied for by each respective new owner"* so the Trust believes they were made aware of this by the Trust's predecessor, British Waterways, when they initially agreed to the mooring terms.


The Trust confirms that any new application for a mooring at this location would not meet the conditions of its Online Mooring Policy, as the property is on the towpath side of the canal and so not adjacent to the canal. The Trust must apply its rules in the same way across all applications received. As this mooring will not meet the requirements of the policy it would not be able to grant it on receipt of an application from new owners simply because it had done so in the past. This would be unfair to other customers in a similar situation. I was satisfied the Trust acted correctly in notifying the couple that the mooring would not be sanctioned on receipt of an application from a new owner of the property.

The couple argued the Trust's decision has affected the value and saleability of the property. While I appreciated that the mooring rights had had an impact on the saleability of the property, they were not a right that had been granted in perpetuity. The land on which the boat is moored belongs to the Trust, it is not and has never been part of the couple's land and on that basis the Trust cannot be held responsible for any perceived loss in value or saleability. I did agree that out of courtesy the Trust should have contacted them, the agreement holders, rather than the Estate Agent and it should apologise for this.

1236 – a complaint about the ownership of a tree on the boundary of the towpath and a residential property.

Mr K wanted the Trust to complete work on an oak tree which grows in the hedgerow at the junction of his garden, his neighbour's garden and the towpath. The ownership of the tree was disputed. Historically the Trust had accepted responsibility and with a contribution from Mr K and his neighbour had pruned the tree. However, when Mr K asked it to cut back the tree in 2018 as it was affecting his garden, they asked for a larger contribution which Mr K was not happy with. In 2022 he made a complaint and in its initial response to the complaint the Trust denied ownership and responsibility for the tree. Following a check of measurements and land ownership, it then concluded the tree sits on the boundary line.

The Trust argued the tree is jointly owned by the parties and each owner would need the permission of the other to carry out any works to the tree and any works should be a shared expense. It also said the tree is structurally sound and did not require any work. Mr K argued the tree did not belong to him or his neighbour but to the Trust and that it was having a detrimental effect on his and his neighbours enjoyment of their gardens and the Trust should bear the full costs of resolving this.



The costs of completing any work would be substantial. There would be preparation work to liaise with the local council and prepare the paperwork to seek consent to do the work as the tree has a preservation order on it and costs of getting the equipment and workmen in to do the cutting.

Having considered the evidence presented I found that the ownership of the tree, although a key element for consideration was a moot point. This is because even if it was established that the Trust owned the tree it would not agree to carry out the work requested since its policy is to leave trees that are structurally sound. The Trust has based its conclusion that the tree is jointly owned on its own legal advice and the distance of the tree from the towpath. If Mr K and his neighbour wished to challenge this, they would need to seek their own legal advice as it is not in my remit to make a ruling on this. However, I did agree it seemed to be a reasonable conclusion based on the position of the tree, which originally formed part of the hedgerow bordering the garden and towpath and has matured equally into both properties.

Mr K has asked that the tree be felled, to prevent the need for repeated arguments each time the tree needs work. With a Tree Protection Order in place this would be a decision only the council could make and as the tree is healthy would be extremely unlikely. The Trust policy is not to carry out work on any structurally sound tree. The Trust has regularly surveyed the tree and recent inspections found the tree to be living and to have no dead, diseased or dying sections, it does not consider it to be a fire risk and would not, without the request from Mr K consider any work to be necessary.

For various reasons, mainly related to the previous offers made and failures in dealing with the complaint earlier, the Trust agreed to honour its previous offer to do a 'little crown lifting'. This would only be with the agreement of the local council and a contribution towards the costs by Mr K and his neighbour of 30%.


Overall, I concluded the Trust had made a reasonable offer to take ownership of the issue and instigate a review of the tree. It is not compelled to do this and is doing so in the interests of being a good neighbour. The offer previously made by the Trust was reinstated and I concluded that was a fair and reasonable one. I did require a small goodwill gesture for some customer service failures.

1264 – a complaint about how the Trust dealt with concerns about erosion of the canal bank and removal of litter at a residential property.

Mr J's garden backs onto the canal and he was concerned there was erosion of the canal bank which would have a detrimental effect on his garden. He was also concerned about a reed bed which was trapping litter and causing the canal to be unsightly. He contacted the Trust and was unhappy with the way it dealt with his enquiries and felt his views were not taken into account.

Following the involvement of the Ombudsman the question about erosion was dealt with and the investigation concentrated on the customer service provided. Mr J requested a substantial goodwill gesture to recognise the inconvenience and time spent making the complaint and the frustration he says he experienced.

My role is to see if Mr J suffered any injustice as a result of maladministration by the Trust. I did find instances of poor customer service, inaccurate or unclear information and delays in responding which could be considered to be maladministration. However, I did not consider that Mr J had suffered any injustice as a result, rather he has suffered inconvenience and frustration.



When considering how to remedy the situation the overriding aim is always to try, as far as possible, to put the complainant into the position they were in before the problem started. The question of erosion and litter had been dealt with and any future issues will be handled in line with the general policy that volunteers will do what they can and when the work boat is passing it will seek to collect what it can. Regarding the reeds the Trust has explained they will not be removed, in accordance with its general policy that they help with erosion and the ecology of the canal and water.

I agreed that the time spent dealing with the issue was longer than necessary because of miscommunication and vague messages and an engineer's missed visit was an error on the part of an individual, who did apologise. Mr J did not provide evidence of any direct or consequential financial loss so to recognise the inconvenience I recommended that the Trust make a moderate goodwill gesture to Mr J. I also recommended that the Trust looks at how it can ensure that the responses it provides to enquiries are clear and consistent and that they have been properly understood by the recipient. Had Mr J been told at the outset that he was responsible for the canal bank and that the Trust was unable to respond to individual requests to remove litter he may not have felt compelled to pursue the matter for so long.

1263- a complaint about the changes to the Trust towpath mowing regime.

Mr G complains that the Trust's decision to change its mowing regime is having a detrimental impact on him as a boater. Leaving the towpath uncut in areas outside designated visitor moorings and areas of high footfall, which are still used by boaters and others is affecting his enjoyment of the waterways. He says that there are areas of canal side growth of up to 6 foot, which means that mooring up and getting on and off his boat is difficult and at times dangerous. He explains that it is difficult to see the pilings to secure his boat, holes in the towpath cannot be seen, his view of the towpath or his boat are obscured. He says that the result will be that vegetation will get into the canal edge and start to damage the structure, silt will build up resulting in the need for more dredging and overhanging trees will increase as trees embed and grow into the canal bank.

Mr G accepts that it is reasonable not to cut the full length of the canals, but says it is not fair to leave moorings that people use. He also appreciates the need to increase biodiversity but says canals are man-made structures designed for navigation. He says canals have their own character and are not naturally a wild environment and the Trust should take this into account.

The Trust explained it has taken the decision to change the mowing regime, which had been in place since 2007, following a trail which it describes as successful. It maintains the regime has never been to maintain the entire towpath network and in many areas the regime is unchanged. It has provided figures which show that the percentage of the network where a fringe is left is now 57% compared with just 18% in 2018. The Trust sees this as a success in terms of increasing biodiversity with its associated benefits.

Based on the information provided I am satisfied there is sufficient scope in the Trust policy to ensure there are spaces for continuous cruisers to safely moor and the change to the mowing regime should not unfairly disadvantage them. The change to the mowing regime reduces the annual cuts from 5 to 4. Eliminating the August cut should have little effect as the grass often does not grow much then. The Trust will firstly aim to allow for a 1.5 metre width of towpath and ensure the fringe is no wider than 1 metre, something which was not in the old regime. The annual full width cut has been bought forward to begin in September/October and part of this requires that any woody vegetation is cut back and the canal bank is checked for saplings, which are removed and hedges cut back. This should help to protect the canal bank

The Trust has provided details of its new mowing regime, explained the changes made and the reasons for the changes and why it does not agree that a risk assessment is necessary for all locations or in respect of the policy. Mr G does not agree with the responses and sees the actions as impacting on boaters' enjoyment of and safety on the waterways. I can confirm that the new regime was implemented following a trial and consultation and there will be a review after a year, this is in line with process. The Trust has provided its reasons why it does not consider that a risk assessment was required, I am satisfied they are in line with process and there is no evidence of any maladministration.

Mr G is adamant that the change in regime is much greater than the Trust says and that strimming to the canal edge was more common than it says. The figures do demonstrate the change is substantial and it maybe that some locations previously did more than others and they may have been areas which Mr G travelled to. As issues with the contractors are resolved, the new specifications are fully adhered to and the requests of local managers are included, I hope that Mr G and other boaters will be able to appreciate the benefits of the increased biodiversity which the Trust is seeking to achieve. To conclude, I did not uphold Mr G's complaint and I required no action from the Trust.

