

**A Report on the Consultation by
British Waterways on**

**IMPROVING
OPENNESS AND ACCOUNTABILITY**

December 2003

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1.0 Foreword

In July we published proposals for *Improving Openness & Accountability*. I stated at the time that we hoped these proposals would create a golden opportunity to take a big step forward in improving how we listen and respond to the many millions of people to whom the waterways belong.

You did not disappoint us! We received comments on the proposals from all the main waterway-related interest groups. They also provided valuable additional suggestions. We have accepted a number of these in the positive spirit in which they were made, while we have given open reasons as to why we do not consider some of them appropriate or possible.

This report represents the 'White Paper' stage of our consultation process. We have allowed until 19 January 2004 for any respondent to raise significant issues about the way forward set out in this document. It is a reflection of our commitment to listen more effectively to the groups who represent visitors and users of the waterways that we have chosen to call this period of the consultation process the 'White Paper' stage, for this terminology was recommended to us by one of the respondents to the consultation paper.

Once we have considered any further significant issues you might have, we will begin the job of mapping out the detailed Terms of Reference, protocols and procedures needed to implement these proposals.

There is still much to be done in establishing a new era of openness and I look forward to working with you over the coming months to realise our shared ambitions. The Board, Executive Management Team and everyone else at British Waterways are committed to fulfilling the potential expressed in this document.



George Greener

Chairman, British Waterways

2.0 Introduction and Summary

British Waterways (BW) published *Improving Openness & Accountability – A Consultation* in July 2003. This document was directly issued to almost 300 organisations, local authorities, special interest user groups, canal societies, Trusts and other bodies with a direct interest in British Waterways' management of the canal and river network.

The consultation document was made available through www.britishwaterways.co.uk and some partners actively provided links to the document from their own web sites. It was also publicised through BW's own customer magazine *Waterfront* and through the main waterways' press titles.

Improving Openness & Accountability set out four principal components intended to improve transparency in BW's decision making processes:

- a more streamlined and responsive internal complaints procedure that takes full advantage of the flatter management structure being introduced by the recently announced reorganisation of BW;
- a re-constituted and updated Waterways Ombudsman Scheme that is transparently independent from British Waterways;
- the setting up of a new national consultative framework that is representative of all significant groups and bodies that have an interest in the waterways; including arrangements for elected committee(s) to have direct access to the Board and senior management of BW; and
- adoption by BW of improved procedures for direct consultation that include following the Cabinet Office Code Practice on Written Consultations for all national written consultations.

The Cabinet Office Code of Practice on Written Consultations was applied to this consultation. Respondents were asked to give opinions on a set of proposals relating to each of the four areas of accountability published in the document. In addition, a set of questions was also posed in each area to assist respondents in considering the merits of each proposal.

In total 27 responses were received. These represent all principal waterway user groups, some waterway-related business interests and a few local authorities and other water-related stakeholder groups.

Respondents were invited to read the consultation document in conjunction with another consultation document issued by Defra (Department for Environment, Food and Rural Affairs) as part of the policy review of IWAAC (Inland Waterways Amenity Advisory Council) it was undertaking together with the Scottish Executive. The final report on the IWAAC consultation is expected to be published early in 2004.

Reading this Consultation Report

This report considers the responses received to each of the four principal components in the order they were originally published. After a summary of the perceived deficiencies and areas for improvement in BW's accountability, each proposal is considered in turn. A selection of actual responses is used to give an indication of the predominant nature of comments received. A shaded box is then used to give British Waterways' response and intentions to the proposal in question.

We feel it is appropriate that the comments of the current Waterways' Ombudsman, Mr Stephen Edell, are highlighted in this report. Before taking over the role of Waterways' Ombudsman in 1997 Mr Edell served as Ombudsman in a number of other schemes and industries and therefore has very relevant knowledge and experience. We therefore particularly value his response to this consultation.

Where additional comments and suggestions were received from respondents, these appear at the end of each section. They are grouped together where appropriate, and British Waterways' response to these is again shown in shaded box and in italics.

Appendix A shows diagrammatically the proposed interactions between the Internal Complaints Procedure, the National Consultative Council and the Waterways Ombudsman. Appendices B to E provide an at-a-glance summary of all responses given. Additional comments and suggestions are also credited to respondents in these tables.

Full copies of all comments received from respondents (none of whom requested confidentiality) are available on request from amanda.strang@britishwaterways.co.uk (tel: 01923 201375).

Publication

This report and accompanying papers will be sent directly to all respondents to the consultation. It will also be available on request from British Waterways Customer Services Centre (01923 201120 and enquiries.hq@britishwaterways.co.uk) .

It is published at www.britishwaterways.co.uk from 9 December 2003

Next Steps

This report was first published on 2 December 2003. It was presented to representatives of National User Groups at their annual meeting with BW's chairman and Board members, BW's Chief Executive and senior management team held on 9 December 2003.

Based on the Cabinet Office Code of Practice on Written Consultations British Waterways considers this report to be at 'White Paper' stage. We will confirm our intentions to proceed based on the proposals accepted in this report should no significant objections be raised by Monday 19 January 2004.

We will also develop more detailed proposals to each area of this consultation. A full timetable to implementation will be published after this 'White Paper' stage.

3.0 Internal Complaints Procedure

The main issues relating to British Waterways' current Internal Complaints Procedure (ICP) and raised in *Improving Openness & Accountability* are:

- The procedure is sometimes seen as over elaborate and lengthy.
- Some complainants perceive that BW management 'up the line' are overly defensive of the staff they are responsible for.
- BW's reorganisation, in particular the appointment of Service Managers, will assist in improvements to the ICP.

In light of these observations, BW put forward four proposals for revision to the current Internal Complaints Procedure:

1. There should be only two levels of attempted resolution of a complaint before the complaint may be referred to the Ombudsman for adjudication (paragraph 11).
2. Referral of a complaint from first level resolution to second level resolution should not follow the management line (paragraph 12).
3. Attempted resolution of complaints should be subject to a time limit (paragraphs 13-16).
4. Complaints handling generally should seek to follow the guidelines of draft international standard ISO/DIS 10018:2002 (paragraph 18).

PROPOSAL 1

There should be only two levels of attempted resolution of a complaint before the complaint may be referred to the Ombudsman for adjudication (paragraph 11).

This proposal was accepted and welcomed by almost all respondents to the consultation.

The **Waterways Ombudsman** commented:

"I agree with the suggestion.....that the ICP is too elaborate and lengthy. (*I have conducted my own survey which*) shows that 55% of those (*who had taken a case to the Ombudsman*) surveyed had not completed the ICP after an average of 215 days since they first contacted me. It is also noteworthy that two complainants gave up because they thought the procedure too demanding."

Haringey Council commented:

“The proposals for complaints handling will definitely have a positive impact on the time efficiency with which complaints are handled, thereby improving the accountability and complainant impression of BW.”

The **Royal Yachting Association** commented:

“The feedback from our inland membership is that the existing complaints procedure can be slow and cumbersome. In principal we welcome the proposals.....however we seek further assurance from BW that letters sent to local BW offices will be acknowledged promptly and a substantive reply sent as soon as possible.”

The Yacht Harbour Association felt it could not agree with this proposal, stating that:

“We believe it entirely wrong that the procedure by-passes the Chief Executives’ Office even if this adds a third level of attempted resolution.”

The **Inland Waterways Amenity Advisory Council** commented:

“Consideration could be given by BW to making the final in-house stage of complaints handling the responsibility of a non-executive Board Member rather than an Executive Director who is by definition part of the internal management structure.”

The National Association of Boat Owners was unable to agree to this proposal without further clarification:

“NABO is confused by this proposal.....BW must clarify the number of levels and confirm whether the Waterway Service Manager will have any involvement in the resolution of complaints; and how complaints involving head office functions will be handled.”

This view was echoed by **Medway Ports**:

“(The consultation document).....seems to imply that the Waterway General Manager will be advised by the Waterway Service Manager. This indicates to me that there is now effectively another step in the process...”

British Waterways' Response to Proposal 1

We accept that the consultation paper did not explicitly state the role of the Service Manager in advising the General Manager at the first stage of the ICP. We will ensure that publicity associated with the ICP clearly shows how this will work. The Internal Complaints Procedure will be clearly defined as two levels. The first level will be considered (and communicated as such) as 'Local Level', handled at Waterway Business Unit or Central Department. The second level will be considered as 'Corporate Level' and handled by a director who will always consult with the Chief Executive. The choice of director to be responsible for a complaint at Corporate Level will be appropriate to the nature of the complaint, so that the director has adequate knowledge of the business area to deal with the complaint within the proposed time limit.

We do not accept the suggestion that consideration of a complaint at Corporate Level should be the responsibility of a non-executive Board Member. A complaint considered within the ICP will relate to matters of BW's operations and it is wholly appropriate that a Director with responsibility for BW's day-to-day management should consider the merits of such a complaint. This will also ensure that the complaint is considered without the need for extensive research and briefing of the subject matter to a non-executive Board Member.

We will implement this proposal.

PROPOSAL 2

Referral of a complaint from first level resolution to second level resolution should not follow the management line (paragraph 12).

Almost all respondents broadly supported this proposal.

The **Waterways Ombudsman** commented:

"I.....welcome the proposals in paragraphs 11 and 12, although it will be necessary to ensure that second level resolution is not unduly delayed by the fact that the Director responsible may be unfamiliar with the issues involved since he does not have direct management responsibility for the relevant business unit."

The **Inland Waterways Association** commented:

“In particular, we agree that the referral of a complaint from first level resolution to second level resolution should not follow the management line, so as to remove any criticisms of bias on the basis that a direct line manager might feel obliged to back a subordinate within his or her own business unit.”

Robert Wynn & Sons Ltd., a respondent specialising in the transportation of abnormal loads by water and other transport modes, replied:

“.....it is crucial that any complaints procedure is seen to be independent of both the decision-making and line management structure within British Waterways.”

The **Calder Navigation Society** disagreed with this proposal, stating:

“The line manager should take responsibility for second level response. If he fails to be objective there is still the independent Ombudsman at the third level.”

The Yacht Harbour Association was also unable to accept this proposal:

“The referral of the complaint from first level to second level resolution should follow the management line unless specifically requested by the complainant.”

The **Scottish Inland Waterways Association** gave a cautious welcome to this proposal, but pointed out that the roles of Service Manager and General Manager did not currently exist within the Scottish structure:

“SIWA consider that the proper structure for complaints in Scotland....*(because of the smaller management structure)*.....would be, at first level, the Director for Scotland, advised by the appropriate Manager for the Lowland / Highland canals, and, at second level, the Chief Executive for British Waterways.”

British Waterways' Response to Proposal 2

Only the Calder Navigation Society and The Yacht Harbour Association gave views against this proposal. However, neither offered any powerful reasoning for changing this proposal. We are minded to take forward Proposal 2 as a part of the new ICP. We firmly believe that by distancing consideration of the complaint from line management responsibilities at the Corporate Level of the ICP there will be more objectivity in considering its merits and thus a better chance of resolution. We have already indicated that the responsible director at Corporate level will be chosen to ensure adequate knowledge of the business area under complaint.

In the case of Scotland we believe that the ICP at 'Local Level' should continue to be the responsibility of the Scotland Waterway Unit (which is under the control of the Scottish Director), representing 'Local Level'. At Corporate Level the complaint can be considered by a director based elsewhere within British Waterways.

PROPOSAL 3

Attempted resolution of complaints should be subject to a time limit (paragraphs 13-16).

Many respondents broadly supported this proposal. Several commented on how the ICP would be improved through the introduction of clear time scales to which both parties could work to. A means by which extensions to time limits could be mutually agreed between parties was welcomed by some.

The **Waterways Ombudsman** commented:

"I also agree with the proposals in paragraphs 13 – 15 (*of the original consultation document*) in principle, although I do not consider that formal confirmation by BW that the ICP is complete is now a prerequisite to my jurisdiction. If deadlock has clearly been reached or if BW is unnecessarily delaying a response that would in my view already enable me to deal with the case. I regard the proposal.....for applications by BW to the Ombudsman for an extension of time as over-elaborate, and likely to cause significant delay while a procedural matter is resolved."

The Kennet & Avon Canal Partnership accepted the proposal but called for the necessary human resources to be available at all times to allow proper discharge of this component of the ICP. From previous experiences this respondent had noticed delays in receiving timely information from central departments, and questioned whether BW's recent reorganisation would improve or further hinder the organisation's overall response rates.

In a similar vein, the **Safe Anchor Trust** questioned whether increasing the proposed time limit for response from 20 days to 25 working days would assist BW in meeting its commitments under these proposals:

"The time limit of 20 working days may be too short allowing for employees' holidays and sickness. We would suggest that 25 days is more realistic. This would keep the complainant before everyone's eyes but make it possible to keep within the dates."

Haringey Council welcomed the proposal, commenting that "it can only contribute to response efficiency and customer satisfaction". This respondent recommended piloting the time limit and monitoring performance to assess whether 20 working days was sufficient time in the bulk of cases for a thorough investigation to be completed and response made.

Medway Ports accepted the need for a time limit to be imposed, but commented:

"Your proposal could induce a lethargy in some managers who could by failing to deal with the issue in a reasonable time have it taken off their hands. If the complaint is not dealt with in a reasonable time....(and)....there are no extenuating circumstances, the complaint should be upheld."

British Waterways' Response to Proposal 3

We are committed to imposing workable time scales within the ICP to ensure that complaints are dealt with efficiently but thoroughly and to the satisfaction of both parties. We believe a time scale of 20 working days to provide a response at each level of the ICP is achievable. We welcome various acknowledgements that this process may be extended from time to time because of case complexities or the need for further specialist research to be undertaken in some instances. British Waterways agrees with the Waterways Ombudsman that proposed arrangements for seeking an extension to time limits through his office are over-elaborate. We believe that the Waterways Ombudsman should take account of any unreasonableness on the part of the complainant in refusing extensions to time when BW has genuine and appropriate cause for seeking such extensions.

British Waterways' Response to Proposal 3 continued:

We will implement a Complaints Tracking System across our Business Units and Central Functions to monitor performance in terms of complaint resolution success and time scales met. This will be supported by a programme of training for appropriate staff to ensure that the ICP and the logging and tracking of complaints are carried out effectively.

An overview of the number of complaints received and our performance in resolving them satisfactorily and within the agreed time scales will be published each year.

We note the comments concerning the potential effectiveness of our recent reorganisation in accelerating response times to general business enquiries. We will monitor our performance in this area by the number of complaints that are lodged alleging delay.

While we accept that unreasonable delay and "lethargy" in dealing with a complaint cannot be condoned we believe that such behaviour should be considered by the Ombudsman as part of his or her investigations into the wider case. We will always endeavour to fully investigate and resolve a complaint well before the 20 working day time limit expires and indeed expect to be able to reply to some less complex complaints in a very short time scale.

PROPOSAL 4

Complaints handling generally should seek to follow the guidelines of draft international standard ISO/DIS 10018:2002 (paragraph 18).

All respondents, other than a handful who expressed no view, accepted this proposal.

British Waterways' Response to Proposal 4

We will implement this proposal.

Summary of Other Suggestions Made by Respondents to the Internal Complaints Procedure Proposals

Respondents were invited to make further suggestions on improvements to the Internal Complaints Procedure. Where these have not been included above within responses to specific proposals, they are shown here. British Waterways' response appears in italics after each set of comments and suggestions.

- **Internal Complaints Procedure Auditing**

Medway Ports - It is essential that lessons are learnt from the subject and resolution of a complaint and promulgated widely throughout the business.

Inland Waterways Amenity Advisory Council – Staff performance should be monitored and audited.

Willowtree Marina Ltd. – A strict internal control system should be established to ensure complaints are responded to fully within the time limits specified.

Our people are appraised according to their performance. We will develop a central database of case information based on the details of complaints considered through the ICP. This will be regularly scrutinised to identify business areas and operations not meeting customer and visitor expectations. The information will be shared across the business and used to improve our performance.

- **Complaints Unable to be Considered by the Ombudsman**

Inland Waterways Association - Complaints unresolved after the second level of the ICP is exhausted, and which fall beyond the remit of the Ombudsman, could be referred to a body such as IWAAC for independent adjudication.

Residential Boat Owners' Association - Other recourse to the complainant should be available should a complaint after Corporate Level be deemed outside of the Ombudsman's remit. Examples of such cases should be readily available to assist a complainant.

Robert Wynn & Sons Ltd. - Complaints unresolved after the Corporate Level consideration (and outside of the Ombudsman's remit) should have recourse to further adjudication.

Inland Waterways Amenity Advisory Council - Where Corporate Level resolution cannot be reached, and the case falls outside of the Ombudsman's remit, IWAAC and the proposed National Consultative Council could adjudicate.

Association of Waterway Cruising Clubs - Complaints outside of the Ombudsman's remit and having completed the ICP should be considered by IWAAC. IWAAC's role should be enhanced accordingly.

We accept that there will be a few instances where the ICP has been exhausted and the nature of the complaint falls outside the Ombudsman's Terms of Reference. These will be in the areas of litigation (where recourse to the courts overrides the Ombudsman's Scheme), personnel matters and issues of BW policy or strategy, the responsibility of BW's Board as appointed by the Secretary of State. We do not consider IWAAC to be an appropriate body to adjudicate on cases outside the remit of the Ombudsman. Such cases will almost certainly concern issues of policy and strategy decided by the Board of BW. These matters can be raised in meetings with the proposed National Consultative Council (NCC) and its Steering Committee. If they remain unresolved it would be possible for the NCC to raise them with Ministers.

- **Publicity for the Internal Complaints Procedure**

Inland Waterways Association - The complainant should be advised at an early stage that their case is under investigation, and regular progress reports should be issued if reconciliation time is lengthy.

Robert Wynn & Sons Ltd. - Information relating to the full complaint procedure should be widely publicised.

Ramblers' Association – The complaints procedure should be widely publicised.

We agree. We will develop a publicity campaign to highlight the Internal Complaints Procedure and how to access it. This will be made widely available at BW offices, through literature and via the website. We will also look to working with our partners to increase awareness of the ICP with their support. Our people will receive training on the Procedure and be expected to promote its correct use wherever possible.

The future ICP will include a requirement for our people to maintain regular contact with a complainant should a case be subject to an extension of time limits for justifiable reasons.

- **Publication of Case Summaries and Third Party Representation**

Robert Wynn & Sons Ltd. - With the agreement of the complainant, details of cases fully considered within the ICP should be made available.

Scottish Inland Waterways Association - User associations should, on invitation of the individual complainant, be able to represent or attend meetings between parties with no resulting breach of confidentiality by BW on full disclosure of the facts.

The Waterways Ombudsman already publishes an Annual Report that gives details of cases considered but without revealing personal details of the complainant.

We have always accepted that a complainant can be represented by an interest group.

- **Improving Responses to General Enquiries and Feedback**

Royal Yachting Association - Assurance should be given that letters sent to local BW offices are acknowledged promptly and a substantive response forthcoming.

Willowtree Marina Ltd. - It must be emphasised throughout the new Business Units that all customer complaints should be dealt with thoroughly and professionally.

The Kennet & Avon Canal Partnership - The introduction and publication of standard reply time standards for the initial, pre-complaint stage of BW procedure should be considered.

The Steam Boat Association of Great Britain - There is a fine line between complaints, comments and enquiries. All three deserve an equally timely and effective response.

The **Waterways Ombudsman** - recommended that BW adopt the practice of many companies within the financial services sector, namely a requirement to inform a complainant of his or her rights under the ICP and including the right to go to the Ombudsman if necessary. However, this system would go too far if it were applied to every minor grumble. The Ombudsman suggested that a definition be applied whereby BW should inform a complainant as described above if a communication constituted a complaint only if it alleged misconduct by BW and required a remedy.

We agree with all of these suggestions. We recognise that by dealing professionally and effectively in the first instance with enquiries, feedback and complaints, we can often meet customer expectations before the ICP has to be activated. We will work with our people at local level to understand how a system of acknowledgement and informal resolution can be implemented within the day-to-day management of the waterways.

4.0 The Waterways Ombudsman Scheme

The main issues relating to the Waterways Ombudsman Scheme and raised in *Improving Openness & Accountability* are:

- A perceived lack of independence of the scheme through the involvement of British Waterways:
 - In the appointment of the Waterways Ombudsman
 - The funding of the Scheme
- A lack of publicity about the Scheme and a general misunderstanding of the Ombudsman's Terms of Reference
- No provision made for awarding consequential losses

With these observations in mind, BW put forward five proposals aimed at improving the independence of the Waterways Ombudsman, information about the Scheme and the scope of the Terms of Reference.

5. The powers of appointment, remuneration, oversight and dismissal of the Waterways Ombudsman should be placed in the hands of an arms-length Ombudsman Committee (paragraph 24 & 25).
6. BW to continue to fund the Ombudsman Scheme, but via the Committee (paragraph 27).
7. The core term of reference of the Waterways Ombudsman shall be "to investigate complaints of injustice arising out of maladministration" (paragraph 32).
8. The exclusion of consequential losses is removed and compensation payments to be capped at £75,000 (paragraph 35).
9. Businesses with a turnover (own or group) in excess of £500,000 should not have access to the Ombudsman scheme to resolve disputes with BW (paragraph 38).

PROPOSAL 5

The powers of appointment, remuneration, oversight and dismissal of the Waterways Ombudsman should be placed in the hands of an arms-length Ombudsman Committee (paragraph 24 & 25).

This proposal was, by and large, accepted as a step in the right direction towards improving the independence of the Ombudsman Scheme.

The **Waterways Ombudsman** commented:

“I certainly welcome the proposal.....for the rewriting of the scheme to meet BIOA’s criterion for independence of the Ombudsman. I am not sure whether the intention is to comply with all BIOA’s criteria for voting membership of the Association. I strongly urge that the scheme should be made to comply with all these criteria. This would both ensure proper standards and provide external validation of the scheme for the benefit of detractors.

“I support the proposals.....for a Waterways Ombudsman Committee in principle. This structure is well tried and appears in many private sector schemes. *(In referring to his submission to Defra in response to the IWAAC consultation)* I consider that IWAAC could well undertake this role. My response to Defra also explains that I differ from the present paper in relation to the best number of members for the committee.”

The **Residential Boat Owners’ Association** responded with:

“We see the importance of demonstrating independence for the Ombudsman as key to the proposals and this *(the proposed Ombudsman Committee)* goes a long way towards it.”

The **National Association of Boat Owners** signalled a cautious welcome to this proposal but felt that independence would be assured only if BW held no places on the proposed Ombudsman’s Committee.

Similarly, the **Safe Anchor Trust** indicated that even greater independence could be achieved for the Scheme if its funding was entirely removed from BW’s responsibility.

The **Inland Waterways Amenity Advisory Council** also agreed with the proposal, but warned against establishing another administrative function, and instead suggested it may be able to take on the role of the Ombudsman Committee.

“The reasoning behind the proposed separate arms-length Ombudsman Committee is understood but it will mean the creation of another body with its own administration. If compatible with IWAAC’s original statutory functions in the 1968 Transport Act, the Council would be prepared to provide an administrative home for this service and operate it as a special sub-committee of the Council, with members appointed as in the BW proposals. If this is not acceptable at the present time, it could be considered in the future review of waterway legislation to which the Government is committed.”

The **National Association of Boat Owners** also considered a potential role for IWAAC in the proposed Ombudsman Committee:

“It may be that IWAAC could participate in the Committee to appoint the Waterway Ombudsman, or perhaps appoint members of the overseeing Committee.”

Hire boat businesses represented by the **Association of Pleasure Craft Operators** had reservations about this proposal:

“Whilst the proposal is at first sight an attempt to distance BW from the appointment and oversight of the Ombudsman, we feel that it may just create another quango with yet more bureaucracy. Limiting a committee to 4/6 would exclude many groups.....”

Willowtree Marina Ltd also expressed concerns over the size of the Ombudsman’s Committee:

“We agree with the idea of an arms-length Committee but the Committee should have at least six people with a maximum of perhaps 12.”

Cathiron Marina Ltd felt more strongly about BW’s proposed presence on the Committee:

“The Ombudsman should be totally independent from BWB. No member of BWB should be on the Committee to employ the Ombudsman nor should BWB continue to fund the Ombudsman Scheme.”

The Steam Boat Association of Great Britain was not convinced that this proposal was either necessary or effective.

“The SBA has no experience of the Ombudsman Scheme, but the proposals for the selection and employment of the Ombudsman give the appearance of a complicated and potentially expensive solution to a minor perceived problem. Is this a sledgehammer to crack a nut?”

British Waterways’ Response to Proposal 5

We will implement this proposal with some modifications that take account of some of the responses described above. We agree that some modest increase in the size of the Ombudsman Committee may be required to achieve an adequate range of views but we believe ten or more to be too large. We believe that the Ombudsman’s Committee will draw great benefit from BW membership, without in any way affecting the independence of this Committee. The BW member(s) will be able to advise on matters such as BW policy and strategy and effectively report back to BW’s Board and senior management on current concerns and issues being considered by such a Committee. The validation criteria of the British & Irish Ombudsmen Association recognise this.

We do not agree that IWAAC is a suitable body to act as the Ombudsman Committee. Aside from real difficulties over the limitation of its current statutory powers, its current duties to advise ministers and British Waterways are not compatible with the oversight of a dispute resolution scheme. The skills and experience needed for each are quite different. We strongly believe that the small costs associated with the running of a separate Ombudsman’s Committee are worthwhile for this improvement.

PROPOSAL 6

BW to continue to fund the Ombudsman Scheme, but via the Committee (paragraph 27).

Many respondents rejected this proposal. The most frequent reason given was that the Ombudsman Scheme would only acquire true independence if a third party provided its funding.

The **National Association of Boat Owners** commented:

“NABO considers that funding of the Waterways Ombudsman should be, and be seen to be, entirely independent of BW.....funding should come direct from the appropriate Government department(s) (e.g. Defra, DfT, etc).”

This view was supported by the **Inland Waterways Amenity Advisory Council**:

“BW funding of the Committee will still give it additional influence. Even more independence could be demonstrated if the Committee were to be funded by Defra.”

Willowtree Marina Ltd. proposed a compromise:

“If funding of the Ombudsman Scheme was not available independently, i.e. from Defra, BW could agree to underwrite the scheme as decided by the Committee.”

British Waterways’ Response to Proposal 6

We agree with most respondents that even better perceptions of independence could be achieved for the Ombudsman Committee if its funding was not provided by BW. We see these advantages but such arrangements will require legislation that is not within our powers. We will continue to have discussions with Defra and the Scottish Executive about this.

In the meantime we intend to implement this proposal and it is our intention, made in good faith, to ensure the independence of the Ombudsman’s Committee is assured. We will underwrite all reasonable costs associated with the full and proper administration and promotion of the Ombudsman’s Scheme. The terms of reference of the Committee will need to include a process for resolution of any (albeit unlikely) disagreement between BW and the Committee on the reasonableness of funding requested by the Committee– referral to Ministers is one possibility.

It is worth noting that the administration of IWAAC is funded directly by BW as required through statute and its independence has not been questioned as a consequence.

PROPOSAL 7

The core term of reference of the Waterways Ombudsman shall be “to investigate complaints of injustice arising out of maladministration” (paragraph 32).

Respondents were largely in favour of this proposal, although it must be noted that several expressed views concerning the definition of ‘maladministration’.

The **Waterways Ombudsman** commented:

“While agreeing with the inclusion of the concept of maladministration, I consider on balance that there should also be a reference to unfair treatment. This concept came into use in the Ombudsman world in the mid-1980s and was enshrined in the Ombudsman provisions of the Building Societies Act 1986.

“It is clear that there is a major overlap between maladministration and unfair treatment in the sense that conduct which constitutes one will often constitute the other. But that is not always the case, particularly where the complaint involves an assertion of deliberate but unfair insistence on the strict terms of a contract.

“The concept of unfair treatment of course allows an Ombudsman to provide a remedy even where there is no breach of a legal duty (the same is true of maladministration).

“I appreciate that the proposal in this section is new to BW, as well as important. I shall be glad to discuss it further on request. One issue might be whether assertions of unfair treatment based on policy or strategic decisions should be excluded in reliance on the activities of the proposed National Consultative Council.”

The **Inland Waterways Association** commented:

“The scheme clearly depends on a widening of the definition of ‘maladministration’ and it would be helpful if a more precise definition of this were provided than that given in the appendix. It is difficult to give approval or disapproval for the scheme before the role of the Waterways Ombudsman is more clearly defined. “

The **Residential Boat Owners’ Association** echoed these comments:

“A precise definition of the role of the Ombudsman is essential for the scheme to be fully agreed.....”

And the **National Association of Boat Owners** proposed:

“.....that the terms of reference of the Ombudsman should be determined independently after consultation on the detail with users and representative groups.”

“It is vital for the Ombudsman’s remit to cover all BW subsidiaries and associated undertakings e.g. WCR, Waterscape, Waterways Trust, Boat Safety Scheme, BWML, etc

The view of including “unfairness” within the Ombudsman’s remit was echoed by the **Inland Waterways Amenity Advisory Council**:

“Given the current debate over a waterway regulator, the Council believes the Ombudsman’s remit should be as wide as possible. For example, the concept of ‘unfairness’ has been incorporated in some ombudsman schemes and merits consideration by BW in the future remit of the Waterways Ombudsman.”

The Yacht Harbour Association remained concerned:

“...that some managers may seek to define ‘maladministration’ less liberally than the definition within the consultation; thus deterring the less resolute but justified, complaine” (sic).

Almost all respondents emphasised the need for a well-communicated and easily accessible scheme to be developed.

British Waterways’ Response to Proposal 7

We will implement this proposal and modify it to include the Waterway Ombudsman’s suggestion that the concept of ‘Unfair Treatment’ is included. We believe that the core Term of Reference of the Waterways Ombudsman should be to investigate complaints of injustice arising out of maladministration. We understand that the concept of maladministration is not simple and that much more needs to be done to promote a better understanding of it. We believe that it will cover the great majority of causes of complaints against British Waterways and that the breadth of the term is still not fully appreciated.

British Waterways' Response to Proposal 7 Continued:

The other great advantage of using maladministration as the core Term of Reference is that it is common to nearly all other Ombudsman Schemes, and therefore over time Ombudsman schemes have built up a wealth of experience in dealing with this usefully flexible concept. We believe that if the Terms of Reference were more precisely defined as a few respondents called for, this would work against some deserving complainants. Furthermore we have not been given any examples of cases found to be outside the Terms of Reference inappropriately.

Nevertheless, we do accept that the concept of "unfair treatment" is a more readily understandable term and its inclusion in the Terms of Reference of the Ombudsman would provide significant additional confidence in the value of the Ombudsman Scheme to people aggrieved by the activities of British Waterways. As the current Waterways Ombudsman observes in his response, many instances of unfair treatment would come within the concept of maladministration. We therefore propose, in our consultation with the Ombudsman Committee over the detailed revised Terms of Reference, to include unfair treatment by British Waterways of the complainant. The only proposed limitation to this would be over issues of policy and strategy decided by the Board of British Waterways where the proper forum for discussion of differences over issues at that high level is the meetings between British Waterways and the proposed National Consultative Council. Further work will be required on the precise terms of this extension to the Ombudsman's Terms of Reference.

PROPOSAL 8

The exclusion of consequential losses is removed and compensation payments to be capped at £75,000 (paragraph 35).

Almost all respondents broadly welcomed the removal of the exclusion of consequential losses. There was, however, little consensus on the level of cap to be imposed, with (notably) business-orientated respondents calling for a higher level to be imposed.

The **Waterways Ombudsman** commented:

"I agree with the principles of the proposals.....namely to allow the Ombudsman to recommend payment for consequential loss, but to impose a maximum on the amount which can be recommended. My only reservations is about the amount of the cap. Most of the Ombudsman schemes that I am familiar have a cap of £100,000, although there is some pressure to increase this. My view is that the cap should be fixed at £100,000."

The **National Association of Boat Owners** commented:

“NABO considers the proposed capping level to be too low and would suggest an upper limit of £150,000 for consequential loss. The limit should be reviewed periodically by the Ombudsman Committee”.

The Kennet & Avon Canal Partnership made suggestions for revising the level of cap periodically to ensure fairness:

“Notwithstanding the low level of existing compensation payments, a cap of £75,000 seems modest in today’s circumstances and should be subject to a regular and fundamental review by the (Ombudsman) Committee and to automatic annual review based on some inflation index which tracks legal compensation payments.”

British Waterways’ Response to Proposal 8

We will implement this proposal with modifications. The Ombudsman Scheme is intended to be a simple dispute resolution arrangement from which there is no appeal for British Waterways (complainants, if dissatisfied, may still take the matter to the courts).

Given the absence of an appeal procedure, and the relative informality of the process, we consider it is appropriate for there to be a cap on awards. To decide the size of the cap it is appropriate to compare the rules of other Ombudsman Schemes.

The maximum amount that may be awarded by the Telecommunications Ombudsman is £5,000; the maximum amount that may be awarded by the Estate Agents Ombudsman is £25,000.

The Financial Services Ombudsman Scheme may make a binding award of up to £100,000. We propose to adopt the current maximum award of the FSO Scheme as the cap for the Waterways Ombudsman Scheme.

We will review the cap periodically, particularly in light of changes to other Ombudsman Schemes to ensure a fair, reasonable and proportionate cap is applied to the Waterways Ombudsman scheme.

PROPOSAL 9

Businesses with a turnover (own or group) in excess of £500,000 should not have access to the Ombudsman scheme to resolve disputes with BW (paragraph 38).

A large proportion of respondents disagreed with this proposal. The general feeling was that the ceiling figure was too low and the basis of using turnover as a benchmark flawed.

The **Waterways Ombudsman** commented:

“I again agree with the thrust of the proposals in paragraphs 36 – 38, subject to two qualifications. First, many Ombudsman Schemes were historically initially limited to complaints by individuals on the basis that most consumers came within this description. In the case of the Banking Ombudsman Scheme, for example, the scope was later increased to include corporations with an annual turnover of less than £1,000,000.

“There may be difficulties, if the present proposals are followed, in distinguishing between business and non-business complainants, bearing in mind that businesses may or may not be incorporated. For example, what happens when an individual complains that BW’s conduct has adversely affected both his home and his business? It may be better to include any complaint by an individual in reliance on the cap, but only to permit complaints by corporations with an annual turnover of less than £1,000,000.”

The **Inland Waterways Association** commented:

“We do not agree that the cap of £500,000 of turnover for businesses to have access to the Ombudsman is appropriate, not least because it will exclude IWA and some other relevant waterway bodies from use of the scheme. Small businesses that are part of a group with a turnover in excess of £500,000 could also be denied the right to use the services of the Waterways Ombudsman if the larger group, of which the small business is part, is unwilling to pursue the dispute through the courts. We would like to see the removal of Proposal 9 along with paragraphs 36-38.”

The **Association of Waterway Cruising Clubs** supported this view:

“.....we are concerned that a simple turnover limitation applied at £500,000 may be too coarse a measure.”

The **British Marine Federation**, representing many individual waterway-related business members, commented:

“The marine companies that the BMF represents are, in the main, small firms, who depend upon the waterways for their livelihoods. Many of these are “lifestyle” businesses that are heavily dependent upon BW helping to create the environment in which their businesses can prosper. Invariably, disputes between BW and our members arise from time to time. Our hope is that a revised Ombudsman Scheme will provide a means by which disputes between the trade and BW can be resolved amicably and cost effectively. We understand concern about inappropriate use of the scheme by large companies, but feel that the annual turnover figure of £500,000 suggested in the consultation paper is too low to properly differentiate between small and large companies.”

A handful of respondents suggested the ceiling should be set according to profit rather than turnover. The **National Association of Boat Owners** reflected several shared concerns that the Scheme could be used by large companies to the detriment of the individual complainant and made the following suggestion about setting a ceiling:

“NABO would support an increase in the suggested threshold to the legal threshold definition of a smaller business i.e. any two of the criteria: turnover not exceeding £2.8m; gross assets not exceeding £1.4m; number of employees not exceeding 50. The definition is a recognised benchmark used by the Inland Revenue and other government departments.”

This view was reinforced by members of the **Inland Waterways Amenity Advisory Council**:

“Independent advice should be sought when setting consequential loss and turnover levels for access to the scheme.”

British Waterways’ Response to Proposal 9

We will implement this proposal with modifications. We agree with the suggestion that the best way to arrive at a definition of a small business eligible to use the Ombudsman Scheme is to use external benchmarks, and to review these from time to time.

One possible objective benchmark is the definition of a small business for Corporation Tax purposes as suggested by National Association of Boat Owners. This defines a small business as one with:

British Waterways' Response to Proposal 9 Continued:

- (a) a turnover of not more than £2.8 million;
- (b) a balance sheet total of not more than £1.4 million; and
- (c) on average (determined on a weekly basis) no more than 50 employees.

We also considered whether the Financial Services Ombudsman Scheme provided an appropriate benchmark. Under that scheme an eligible complainant is:

- (a) a private individual
- (b) a business which has a group annual turnover of less than £1 million at the time the complainant refers the complaint (to British Waterways)
- (c) Charities and Trust of similar financial size

The primary purpose of all Ombudsman schemes is to provide a simple, low (or no) cost dispute resolution procedure for those for whom formal legal remedies via the courts etc would be an unreasonable burden. We consider therefore that a benchmark based on other Ombudsman schemes is more appropriate. The Corporation Tax benchmark is designed for a very different purpose and would encompass businesses capable of pursuing formal legal remedies.

We therefore propose to adopt a modified version of the Financial Services Ombudsman Scheme's eligibility cap for small businesses. We propose that a business with a group annual turnover of less than £1 million at the time of the original complaint should be eligible to use the Scheme, but not larger businesses. In addition (as under the FSO Scheme) a charity that has an annual income of less than £1 million, or a trustee (or trustees) of a trust that has a net asset value of less than £1 million, (in both cases assessed at the time of when the complaint is first referred to BW) will be eligible complainants. However unlike the FSO scheme we propose there should not be any eligibility cap for charities or trusts that are members of the NCC. This will enable waterway-related user and interest groups to have access to the Waterway Ombudsman scheme regardless of turnover or net asset value.

Summary of Other Suggestions Made by Respondents

Respondents were invited to make further suggestions on improvements to the proposed revised Ombudsman Scheme. Where these have not been included above within responses to specific proposals, they are shown here. British Waterways' response appears in italics after each set of comments and suggestions.

- **Extending the Waterways Ombudsman Scheme**

National Association of Boat Owners – The Ombudsman Scheme should be extended to cover all waterways and not just those managed by BW.

This is a matter for Government and for other Navigation Authorities.

- **Awareness of the Ombudsman's Scheme**

Inland Waterways Amenity Advisory Council - Promotion of the Ombudsman's remit and activities should be tackled immediately through measures such as the establishment of an Ombudsman's website.

Robert Wynn & Sons Ltd. – The Scheme will only be successful if the awareness of its existence and role is maximised. We would welcome commentary from the Waterways Ombudsman on ongoing themes and issues within his sphere of influence, perhaps in his Annual Report which should be made public.

Willowtree Marina Ltd. - Much more information is required to determine what is and is not within the Ombudsman's jurisdiction.

Ramblers' Association - Awareness of the Waterways Ombudsman scheme could be raised through highlighting its existence within other Ombudsman's literature.

The **Waterways Ombudsman** – If the scheme is adequately publicised (*as proposed*) a significant increase in workload is likely. This will lead to a requirement of a substantial increase in resources, both on the personnel and support sides. In particular, there is currently no provision at all to carry on the work of the Scheme if the Ombudsman becomes unwell or is otherwise unable to perform his duties.

We support these calls for greater publicity and awareness of the Ombudsman Scheme. It is intended that the Ombudsman's Committee be responsible for publicity of the Scheme and that we will ensure this body has reasonable resources to meet this goal. The Waterways Ombudsman currently publishes an Annual Report, and we would hope that this document would be more widely available through the work of the proposed Committee. If funding for the Ombudsman Scheme comes from another source than BW (which we hope will eventually be the case) we would wish it to be sufficient for adequate publicity. We note the Ombudsman's concern about an increase in workload and unexpected absences from the role. We will recommend that the Ombudsman's Committee make suitable provisions should these circumstances arise.

- **Compensation Payments**

The **Waterways Ombudsman** - The Ombudsman should be able to recommend compensation for distress and inconvenience up to a limit of £5,000.

The **Calder Navigation Society** - The cap should apply to notional costs but there should be no cap on financially substantiated claims for compensation. Nor should any settlement brokered by the Ombudsman preclude a complainant from taking legal action through the courts.

British Waterways has considerable sympathy with the suggestion that the Waterways Ombudsman should be able to award compensation for distress and inconvenience. This is a common feature of other Ombudsman Schemes, though it must be made clear that simple distress and inconvenience is not a ground for complaint in itself – the distress and inconvenience must arise from injustice caused by unfair treatment or maladministration by the body complained against.

Inconvenience and distress can occur from causes beyond British Waterways' reasonable control. For example, the licence conditions provide that the age of the waterways inevitably mean occasional unforeseen failures require closures. Distress and inconvenience in such circumstances where there has been no unfair treatment or maladministration by BW would not result in compensation being awarded.

Unlike consumer-orientated Ombudsman Schemes, generally the law does not recognise liability for distress, frustration and aggravation except in relation to contracts where the very object of the contract is to provide pleasure, relaxation or peace of mind (as with, for example, package holiday contracts). However the range of complainants eligible to use the Waterways Ombudsman Scheme goes far beyond leisure users and includes commercial organisations with essentially business disputes. British Waterways agrees that, regardless

of any legal liability, it is good practice to recognise, and provide recompense for, distress and inconvenience to those not engaged in commercial activities. We do not believe however that such recompense should properly be payable to commercial or business complainants.

We propose therefore that the Ombudsman should be able to recommend awards for distress and inconvenience suffered by private individuals in respect of substantive complaints not related to commercial or business activities of that complainant.

- **Ombudsman’s decision on eligibility of complaints and complainants**

The **Waterways Ombudsman** - The Ombudsman alone should decide whether a case falls within the Scheme's remit. BW should abide to a time limit in responding to a request for evidence and case histories as requested by the Ombudsman.

We agree that the Ombudsman should decide whether a case falls within or outside of the Scheme’s remit.

- **Business Complaints**

Residential Boat Owners’ Association – Businesses with a turnover in excess of £500,000 should have the opportunity for their complaint to be heard and adjudicated on.

Above the limit established (see our main response to Proposal 9) we believe a business will have the necessary resources to seek redress through the courts or other available commercial dispute resolution processes.

5.0 New Framework for Consultation on Policy Strategy

The main issues relating to British Waterways' processes of determining policy and strategy and raised in *Improving Openness & Accountability* are as follows:

- While the decision making process is defined within a framework set by Ministers, the workings of the Board can appear and sometimes are remote from stakeholders of the waterways and their environs.
- While improvements have been made in recent years (annual meeting, both for Scotland and for England & Wales, National User Group meetings), there is still an accountability deficit.
- Regular ad hoc contact with user groups and individual stakeholders is welcomed but a formal process through which concerns can be aired quickly and effectively at the most senior BW level should support this.

In light of these observations BW made six proposals to improve transparency of operation and decision-making processes and understanding of stakeholder needs and concerns:

10. Establish a new national consultative framework that is representative of all significant groups and bodies that have an interest in the waterways; under which elected steering committee(s) would act as the primary point of contact with BW (paragraphs 44-47).
11. The steering committee(s) to have access to BW at the highest level to raise, discuss and mediate over issues of concern or interest at the level of policy and strategy (paragraphs 47, 54, 55).
12. Organisations would be invited to become members of any one or more consultative body by ministers, acting so that they are as inclusive as possible (paragraphs 49 & 50).
13. Management of the consultative bodies, and election of the steering committee(s), would be in the hands of the membership (paragraphs 48, 52, 53).
14. The consultative framework could be set up on either a voluntary or a statutory basis – or could be set up on a voluntary basis and be converted to a statutory arrangement once legislative time became available (paragraphs 56-60).

PROPOSAL 10

Establish a new national consultative framework that is representative of all significant groups and bodies that have an interest in the waterways; under which elected steering committee(s) would act as the primary point of contact with BW (paragraphs 44-47).

Respondents were largely in agreement with this proposal.

The **Waterways Ombudsman** commented:

“I support the general thrust of the proposals for a new National Consultative Council (“NCC”) and its elected steering committee.”

The **Association of Waterway Cruising Clubs** commented:

“The proposed new National Consultative Framework could very much improve the present system and the existing formal consultation arrangements. However, our members have very specifically asked that consultative meetings at Local and Regional, as well as National levels, should be maintained.”

The **British Marine Federation** supported this latter comment, concerning the preservation of current arrangements that are considered to be effective:

“The BMF considers that the proposed new national consultative framework would be beneficial to improving the openness and accountability of BW. Over recent years, BMF management (Executive and non-Executive) has pursued a co-operative and constructive working relationship with BW’s senior management team. It would appear to be in keeping with the spirit of what is being proposed that this relationship (and individual relationships that exist between BW and other organisations) would continue in a way that is compatible with the new national consultative framework.”

And by the **Inland Waterways Association**:

“.....the existing formal consultation arrangements, including meetings of user representative groups at national and local level, need to be maintained.”

The **Royal Yachting Association** further supported this view:

“The RYA supports the proposal to create a national consultative framework but any future framework should maintain contact with user groups and build on the existing consultative structure.”

The **Kennet & Avon Canal Partnership** questioned whether a future National Consultative Council would really bridge a perceived gap between waterway stakeholders and BW:

“The establishment of a national consultative framework is initially attractive, but carries the risk that the representation outside BW becomes as remote from the grass roots as is current by the situation on the BW side. The existing ad hoc arrangements at local levels works where BW want them to and the outside interest wish to work co-operatively.”

The **Inland Waterways Amenity Advisory Council**, while generally supportive, had significant reservations about the proposed new structure:

“The proposed framework cannot help but appear cumbersome compared with the current national user meetings, those covering towpath and boating issues being held twice a year, with one annually on policy. These have proved creative sessions with a strong input from users on a wide range of subjects although there is a weakness in promulgating the information to other parts of BW and a greater number of users.”

The **National Association of Boat Owners** responded with:

“NABO supports this proposal in principle, subject to costs being kept to a minimum so that no national group would find itself embarrassed by the subscription level.”

The **Ramblers’ Association** dismissed the proposal of a subscription fee, responding with:

“We do not agree with the suggestion at paragraph 48 that the consultative body should be funded by subscription, as the work of the consultative framework would fall within BW’s remit as a public corporation. The introduction of a subscription could also deter membership from smaller national bodies that, nonetheless, have an important role to play in helping to develop BW’s objectives.”

The **Scottish Inland Waterways Association** welcomed the proposal and called for a separate body to be established to consider issue specific to Scotland:

“Given the devolved nature of government in Scotland, and its separate administrative and legal systems, SIWA believe it is essential that a separate, or distinct, national consultative framework be created for Scotland.”

Falkirk Council supported this view:

“...if a new consultative framework is established, there should be separate bodies for Scotland and for England and Wales.”

British Waterways’ Response

We have combined our responses to Proposals 10 and 11. These can be seen on pages 37 & 38.

PROPOSAL 11

The steering committee(s) to have access to BW at the highest level to raise, discuss and mediate over issues of concern or interest at the level of policy and strategy (paragraphs 47, 54, 55).

Again, this proposal was generally accepted but with calls for greater detail to be made available before full support could be given.

The **Residential Boat Owners’ Association** commented:

“Such a wide range (*of stakeholders*) will inevitably have a considerable difference in their focus of interests, some national or local government based, some commercial, some specific subject based and some representing general or specific user groups. We have concerns that this wide range of interests and expertise will be difficult to distil into one steering committee.”

The **Association of Pleasure Craft Operators** commented:

“To suggest the removal of National User groups to be replaced by a standing steering committee, which some lucky organisation would have to provide the secretariat for is BW trying to introduce a level of bureaucratic defence to hide behind. It is clear that BW no longer wish to meet and directly discuss issues.”

It was emphasised by a number of respondents that continuing to develop existing communication routes between BW and stakeholders could mitigate any exclusiveness fostered by a small membership of the Steering Committee. **Willowtree Marina Ltd.** summed this view up:

“It is vitally important that other, equally valid, points of contact are not lost. The marine leisure industry would not accept any diminution of the role of BMF in representing the interests of its members to BW at the highest level.”

British Waterways’ Response to Proposals 10 and 11

Whilst there was considerable support for these proposals in principle, there was concern that the new consultation arrangement should not displace those existing arrangements and practices that work well.

We believe that the proposed National Consultative Council and its Steering Committee will offer greater inclusiveness to the many varied waterway-interest represented groups, associations, organisations etc. We propose to assimilate the current National User Group arrangements (currently one meeting annually) into the proposed more extensive National Consultative Council arrangements. However the separate meetings concerning boating and corridor issues will continue to be held on the same basis as at present, but high level and strategic issues unresolved at those meetings could be referred to the National Consultative Council.

There was some confusion about the proposed role of the National Consultative Council – for example IWAAC asked the question “will the new body be capable of offering effective strategic advice?”

British Waterways would not expect the NCC necessarily to decide upon and advocate a consensus view on particular issues. As a number of respondents observed, with a very broad constituency, the NCC may not always reach a common viewpoint, but it does not necessarily need to. The benefit of the NCC is that BW can draw on its wide range of experience and representation to help it understand issues better. This is particularly helpful since NCC members will be bodies run by and representative of their membership._

British Waterways' Response to Proposals 10 and 11 Continued:

The most important task of the National Consultative Council (and in particular its Steering Committee) is the mediation of those relatively few issues and grievances that are outside the jurisdiction of the Waterways Ombudsman. These will essentially be strategic and policy issues decided upon by the Board of British Waterways, or, occasionally, its executive directors.

Discussions between the National Consultative Council and British Waterways need not be confined to grievances. But it is likely they will be focused on matters of policy and strategy where exchanges of views, explanations and high level contact can take place.

Direct contact with particular interest groups over more focused issues will still occur – e.g. on boating, fishing cycling, wildlife etc. The National Consultative Council would not necessarily be expected to develop a common view on such focused issues given the potentially conflicting viewpoints of its constituent members – though the National Consultative Council meetings with British Waterways could be a useful forum where such issues could be raised. In addition to promoting dialogue and understanding between British Waterways and stakeholders, it may also assist in promoting dialogue and understanding between stakeholders with a different outlook.

The Steering Committee

A National Consultative Council of up to 40 or so separate organisations is too unwieldy a body to engage in meaningful discussions with British Waterways (though an annual meeting between British Waterways and the full membership of the National Consultative Council is anticipated). Therefore there does need to be a smaller body – we have called it a Steering Committee but many other names are possible – for round table discussions with British Waterways.

This Committee needs to be representative of the broad range of views in the National Consultative Council – it will not be expected to present just one view since on many issues that will not be possible. It may be that the membership of the Committee varies to some extent according to the nature of items on the agenda of the (say) twice-yearly meetings with British Waterways.

PROPOSAL 12

Organisations would be invited to become members of any one or more consultative body by ministers, acting so that they are as inclusive as possible (paragraphs 49 & 50).

In general there was a mixed response to this proposal reflecting concern that whatever process was used to ensure inclusiveness would inevitably fail.

The **Inland Waterways Association** commented:

“Although paragraphs 49 and 50 are designed to ensure that the consultative framework is inclusive, we have concerns that membership by invitation could appear exclusive. We would welcome greater clarification on the meaning of paragraph 49.”

The **National Association of Boat Owners** called for transparency of the process of appointment:

“NABO considers the proposal that user groups should be appointed to the consultative body by ministers to be preferable to nomination by BW itself. In the interests of fair-play we would request that the appointment process be open and transparent and that membership be for a pre-determined period of time, with other bodies having the opportunity to be appointed as circumstances dictate.”

The **Kennet & Avon Canal Partnership** reinforced this view:

“This (*proposal*) is okay provided it would be open to organisations to apply and the Minister.....would be obliged to give reasons for refusal, which would be subject to review....”

The **Association of Waterway Cruising Clubs** expressed reservations about the appointment process:

“Membership of this new framework needs further clarification. The election of any steering committee raises major concerns. The arrangements need to be balanced to ensure that the prime objective - the maintenance of the waterways and the navigation rights and future restoration – is met. This principle is held paramount. The enjoyment of all potential users must be taken into consideration, as long as it is not detrimental to the ‘prime objective’ and existing working relationships.”

While a large number of respondents agreed that Ministers should be responsible for inviting stakeholder groups to become members of one or more consultative bodies, the **National Association of Boat Owners** believed:

“The member organisations themselves.”

British Waterways’ Response

We have combined our responses to Proposals 12 and 13. These can be seen on page 41.

PROPOSAL 13

Management of the consultative bodies, and election of the steering committee(s), would be in the hands of the membership (paragraphs 48, 52, 53).

Many respondents simply agreed with this proposal. The **National Association of Boat Owners** commented:

“NABO considers that the concept of an elected steering committee would be acceptable and provide a vehicle for major issues to be channelled through to BW. Individual groups’ special concerns could be raised separately using the ongoing established arrangements.”

The **British Marine Federation** echoed these views:

“We agree that it would be right for the management of the consultative bodies to be in the hands of the membership. The consultative bodies need to have recognition and status from Government and from BW. We do not therefore feel that it is appropriate for members to pay a subscription fee and believe that costs should be covered by the Government department (DEFRA). We do not consider it unreasonable for one of the members to take on the responsibility of providing a secretariat.”

Robert Wynn & Sons Ltd. strongly believed in this proposal:

“This is a very important principle that needs to be enshrined in the setting up and subsequent work of the consultative committees.”

British Waterways' Response to Proposals 12 and 13

We intend to move forward with these proposals and to facilitate the setting up of National Consultative Councils for England & Wales and Scotland.

The internal arrangements of the National Consultative Councils will be for their members to decide, but British Waterways is happy to assist in having constitutions prepared, if necessary by engaging external consultants to act directly for the National Consultative Councils. It will suggest that a simple and flexible structure be created for each.

It is intended that participation in the Councils is open to membership organisations representing both private individuals and waterway-related businesses that primarily have a national outlook.

Most respondents agreed that the relevant Waterways Minister would be the appropriate person to invite bodies to membership, though British Waterways also accepts that the Councils themselves should be ready to put forward to Ministers (Defra and Scottish Executive) new candidates for membership.

Views were mixed over the need for weighted voting. British Waterways anticipates that almost the only issue on which votes will be needed is selection of officers and membership of the Steering Committee. Since the National Consultative Council will not be expected necessarily to advocate a single viewpoint, votes on policy will not normally be necessary. Given the difficulties in devising a weighted voting scheme (whether based on size or interests of member organisations) acceptable to most members, British Waterways remains of the view that a simple one member one vote system would be preferable. It would be unwise of the membership to exercise those votes tactically to exclude influential representatives from the membership of the Steering Committee since that would seriously damage the influence and thus value of the body. Ultimately such arrangements will be for the membership to decide.

PROPOSAL 14

The consultative framework could be set up on either a voluntary or a statutory basis – or could be set up on a voluntary basis and be converted to a statutory arrangement once legislative time became available (paragraphs 56-60).

Almost all respondents agreed that the consultative framework should initially be established on a voluntary basis. A similar number went on to agree that this should become a statutory framework once experience in its operation had been gained and legislative time made available.

The **Waterways Ombudsman** commented:

“Turning to the discussion about whether the NCC should be on a voluntary or statutory basis I strongly support the concept of ‘shadow’ bodies to be replaced in due course by statutory ones. It would be a mistake for any statutory constitution for the NCC to be set out in detail in primary legislation, as is demonstrated by the difficulties caused by the evolution of the role of IWAAC over the years. It would be far better for an Act to give ministers powers to deal with (and amend) the details in secondary legislation. It seems unlikely that Parliament would object to this proposal in the current area, which is not of enormous importance on a national level.”

The **Residential Boat Owners’ Association** summed up the general feelings towards this proposal:

“We support the consultative framework initially being set up on a voluntary basis with the potential to convert it to a statutory arrangement once the legislation can be achieved.”

The **Royal Yachting Association** urged that the framework eventually become a statutory instrument to ensure consistency and permanence:

“We.....wish to see an intention to create a statutory framework to remove any uncertainty and inconsistency. However, it is clearly important to put the most appropriate structure in place and the proposal to start with a voluntary arrangement which could then be modified as appropriate before eventually becoming the statutory body is probably the best way forward.”

British Waterways’ Response

We have combined our responses to Proposals 14 and 15. These can be seen on page 42.

PROPOSAL 15

Alternatively, IWAAC could (legislative procedures permitting) be changed to a 'stakeholder managed' consultative role (paragraphs 61-63).

There was no overall consensus.

The **Waterways Ombudsman** commented (in his response to Defra's consultation on the future of IWAAC):

"I do not think that it would be advisable for IWAAC to carry out its present functions and assume the role of the NCC. At present IWAAC gives advice based on its own expertise. The NCC's role would be bound to be influenced by pressures brought by the constituent members of that body."

Amongst those respondents who agreed with this proposal, the **Safe Anchor Trust** commented:

"With modifications (*IWAAC*) should become the independent consultative body."

Willowtree Marina Ltd. believed that this proposal was possible, commenting:

"We think it (*IWAAC*) can be. But it has been hampered in the past by the lack of an ability to question BW as to its openness, fairness and accountability."

Of those who disagreed with this proposal, the **Inland Waterways Association** commented:

"IWAAC should not be adapted to a consultative role, under the control of stakeholder organisations. It has a valuable role as an impartial source of wide-ranging waterways expertise and has provided much useful service in the past."

The **Ramblers' Association** also disagreed and suggested ways in which IWAAC could work with the new National Consultative Council:

"We believe there is still a role for IWAAC in a research/advisory capacity, and to facilitate cooperation and liaison between BW, DEFRA, the Environment Agency and other navigation bodies. This would also extend to forging links with the consultative body, if set up, and IWAAC should be present at meetings of the full body of members and the steering group. To this end, it should remain separate from, and not be merged with, the consultative body."

British Waterways' Response to Proposals 14 and 15

Almost all respondents saw advantage in proceeding to set up the National Consultative Council on a voluntary basis at first with the intention to give a statutory foundation once legislative time allowed, and the body had sufficiently matured, providing some status and certainty. We will implement Proposal 14.

Proposal 15 was aired in the context of the Defra/Scottish Executive consultation on the future of IWAAC. There was no overall consensus, with most national organisations being against it. IWAAC also did not support the Proposal. British Waterways does not believe this Proposal to be a viable option and believes the future of IWAAC should be decided under the current Defra / Scottish Executive review independently of the British Waterways' proposals on Openness & Accountability.

Additional Questions to this Section not Covered within the Proposals

- **Should there be separate bodies for England & Wales & Scotland?**

It was generally agreed that there should be two bodies, one for England & Wales and one for Scotland, reflecting the different political framework in each part of the UK. We will include this provision within the overall development of the National Consultative Councils.

- **In general meetings of the bodies, should voting be weighted or be one vote per member organisation?**

Overall, respondents felt that one member one vote was the most effective means of deciding proposals raised at general meetings. Once the National Consultative Council is established, British Waterways would hope that the mechanism arranged by the Council would be fair and proportionate in its composition with credible, balanced and representative ideals.

6.0 Direct Consultation

While implementation of the other proposals contained within *Openness & Accountability* are generally expected to improve understanding between British Waterways and its many stakeholders, it is important that debate on other matters outside of the workings of consultative bodies continues.

Three proposals under the heading “Direct Consultation” were published with the aim of formalising these frameworks and improving consistency and transparency in our decision-making processes.

We have worked to Proposal 17 during this consultation process, using the Cabinet Office Code of Practice on Written Consultations.

PROPOSAL 16

BW will publish a new policy on consultation that will require consistency and clarity in consultation across all business units (paragraphs 67 & 68).

Almost all respondents accepted this proposal. Only a handful expressed no view.

Of those that agreed with the proposal, **The Steam Boat Association of Great Britain** commented:

“Direct consultation will continue to be very important for an organisation like the SBA. Owing to its specialist nature, it seems likely that this will continue to be the nature of the SBA’s most frequent communications with BW.”

The **Manchester, Bolton & Bury Canal Society** shared the views of the **Inland Waterways Association**:

“The existing formal written consultation arrangements, as improved by using the Cabinet Office Code, ensure that all organisations have the opportunity to express their views on major issues.”

The **Residential Boat Owners’ Association**, while welcoming the proposal, urged caution:

“RBOA supports proposal 16, the publication of a new policy for consultation at national and local levels and the need for consistency and clarity. We are concerned that discussions at local user groups are not divorced from those at national level and suggest that a framework is set up to enable current issues to be shared.”

British Waterways' Response to Proposal 16

We will implement this proposal. We agree that any consultation principles drawn up must make proper arrangements to include a range of views representing local and area opinions along with national attitudes.

PROPOSAL 17

For national written consultations BW will adopt the Cabinet Office Code of Practice on Written Consultations (paragraph 70).

All respondents were in agreement with this proposal other than those that expressed no view.

The **National Association of Boat Owners** commented:

“NABO strongly supports the adoption of the Cabinet Office CoP on Written Consultations and urges BW to adopt the Green Paper / White Paper approach for all new policy initiatives..... When BW has used the 2-stage process outlined above for specific issues in the past, the consultation exercises with user groups have been most effective.”

The **Yacht Harbour Association** echoed this opinion:

“We are sure that the initial adoption of the Cabinet Code of Practice on written consultations will provide a fine basis to work from and again would become a matter for the Consultative Committee to debate in the future if this Code became a matter of concern.”

British Waterways' Response to Proposal 17

Based on this support and our experience of the Cabinet Office's Code of Practice we will implement this proposal for all national written consultations.

PROPOSAL 18

For local or special interest consultations, more informal procedures may be used, but what they are will be made clear at the outset of any consultation (paragraphs 72 & 73).

Many respondents either agreed with this proposal or expressed no view.

The **National Association of Boat Owners** could not agree with this proposal:

“NABO does not support the distinction between “National” and “Local” interest consultations utilising different procedures. Frequently, matters which start as local issues take on national importance and relevance. If there is to be a two-tier system we would still expect the same standards to apply to both.”

The **Calder Navigation Society** was also unable to accept the proposal:

“Arrangements for local consultation should have been defined in this document. We suggest that supplementary consultation on this important area be carried out and agreed arrangements incorporated in the final document before it is adopted.”

The Steam Boat Association of Great Britain commented:

“We support the adoption of the principles of the Cabinet Office Code for consultation, but they should be modified to suit local and specialist consultations to avoid unnecessary cost and delay. Twelve weeks is a long period for most consultations, and a shorter period would often be justifiable; we believe that organisations which wish to be consulted have an onus on them to adapt to reasonable timescales.”

British Waterways’ Response to Proposal 18

We believe it is essential that some flexibility exist at local and area level and where specialist consultations are undertaken. It is important to establish a framework for consultation at these levels that takes into account the nature of these consultations, subject matter and the ability for groups and individuals to respond effectively. We will implement this proposal.

Summary of Other Suggestions Made by Respondents

Respondents were invited to make further suggestions on improvements to the way in which Direct Consultation is managed. Where these have not been included above within responses to specific proposals, they are shown here. British Waterways' response appears in italics after each set of comments and suggestions.

- **Value of Local Consultation**

Inland Waterways Association - we suggest there remains a need for gatherings set at a regional level – to provide both a strategic overview that is widely accessible to locally based representatives, and to encourage contact between senior management and a range of waterway user interests.

Residential Boat Owners' Association - We are concerned that discussions at local user groups are not divorced from those at national level and suggest that a framework is set up to enable current issues to be shared.

Willowtree Marina Ltd. - Chairing of local meetings concerning matters for consultation should be on a rotational basis. A formal mechanism of raising local issues up to national consultation should be implemented. BW staff should not present an "us & them" scenario at meetings, but sit within the audience and be called on for advice only where appropriate.

Association of Waterway Cruising Clubs - We firmly believe that Local and National meetings can prevent local issues becoming National issues, which would otherwise have been resolved at an early stage, and can reduce the number of grievances in general.

We recognise that a robust framework of meetings, consultation principles and day-to-day dialogue with interested stakeholders is essential to maintaining good relationships with our partners. Through further discussions with interested parties we will develop proposals for inclusive local and regional meetings that meet the expectations of our stakeholders. A schedule of these will be published on a yearly basis.

- **Availability of Consultations**

Royal Yachting Association - Local or special interest consultations should be circulated nationally to ensure that interested parties are not omitted.

Robert Wynn & Sons Ltd. – Details of all consultations, regardless of their size or nature, should be publicly available.

We accept that the widest opportunities should be made for all interested parties to gain knowledge of and respond to consultations across BW's activities. We will use our web site as the primary means by which matters of consultation and stakeholder dialogue can be disseminated.

Appendix A OPENNESS AND ACCOUNTABILITY CONSULTATION REPORT

