House of Commons
Environment, Food and Rural Affairs Committee

The Draft British Waterways Board (Transfer of Functions) Order 2012 and the Draft Inland Waterways Advisory Council (Abolition) Order 2012

Oral and written evidence

Tuesday 13 March 2012

Ordered by The House of Commons
to be printed 13 March 2012
Environment, Food and Rural Affairs Committee

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List of witnesses

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Tony Hales, Chairman, British Waterways and Chair of Canal and River Trust Transition Trustees, Robin Evans, Chief Executive, British Waterways, and John Kittmer, Head of British Waterways Sponsorship and New Waterways Charity Project, Defra

Clive Henderson, Chairman, Inland Waterways Association, and Howard Pridding, Executive Director, British Marine Federation

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Taken before the Environment, Food and Rural Affairs Committee
on Tuesday 13 March 2012

Members present:

Miss Anne McIntosh MP (Chair)
Thomas Docherty
George Eustice
Barry Gardiner
Iain McKenzie
Neil Parish
Amber Rudd

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Examination of Witnesses

Witnesses: Tony Hales, Chairman, British Waterways and Chair of Canal and River Trust Transition Trustees, Robin Evans, Chief Executive, British Waterways, and John Kittmer, Head of British Waterways Sponsorship and New Waterways Charity Project, Defra, gave evidence.

Q1 Chair: Gentlemen, good morning and welcome. Thank you very much for contributing to what is a first for this Committee and probably Parliament: to consider an Order under the recent Public Bodies Act. We are very grateful to you. For the record, could you introduce yourselves and tell us what positions you occupy? Mr Hales, would you like to go first?

Tony Hales: I am Tony Hales, Chairman of British Waterways and also the Chairman of the Canal and River Trust.

Robin Evans: I am Robin Evans, Chief Executive of British Waterways.

John Kittmer: I am John Kittmer, Deputy Director for Inland Waterways at Defra.

Q2 Chair: Thank you. Mr Hales, it would be enormously helpful if you explained to the Committee what the current status of the Trust is, and where we are in the proceedings.

Tony Hales: The Trust exists as a shell, with no assets yet. We have a Board of Trustees, which is now complete, and we have also announced our Council Members. There are about three positions left to fill, but 32 of the 35 positions of the Council are now in place. We have announced the Waterway Partnership Chairs. There are 13 Partnership Chairs, and 12 of those are now in place. The Trust is very much in place. We have announced the Waterway Partnership and New Waterways Charity Project, Defra, gave evidence.

Q3 Chair: Are there any outstanding issues to be resolved before the Trust is ready for the transfer?

Tony Hales: I do not think there are any issues of principle there. It is down to wordsmithing the detail.

Q4 Chair: I know that under the new system you will be heavily dependent on volunteers, and you have started a recruitment process. In my own area, we are heavily dependent on our excellent North Yorkshire Moors Railway. Given the economic climate, there are obviously issues for volunteers, like fuel and the cost of travelling to work. Does your dependence on volunteers and on there always being a steady stream of them concern you?

Tony Hales: If I could step slightly back and look at the financing, we have an income of about £150 million per annum. At the moment an income of about £100 million is generated from the commercial activities of British Waterways—that is a mixture of property, utilities, boat licences and moorings, marinas and so forth—and then the grant element of that is about £40 million per annum. When we are looking forward, towards being a charity, in the initial years our projections are for no net charitable income, because there will be a cost in building that up. We are looking to build that net charitable income up to be in year 10 approximately £10 million. It is important to understand the relativities of commercial income, Government grant, and the voluntary income, which, important though it is, is the smallest element. We have 24,000 volunteering activities at the moment. This has grown three times over the last three to four years, and yes, we aim to continue to grow that. We are very confident that we can achieve this, because there is huge interest out there. One small cameo: 7,000 people walked through the Bingley high rise locks one weekend just recently. People actually wanted to put money in a tin for the experience, but we were not in a position to take it.

Q5 Amber Rudd: Sorry, I just wanted to follow up on your comment that there are 24,000 volunteering activities. Is that individuals volunteering?

Tony Hales: 24,000 volunteer days.

Q6 Chair: That is helpful. Against that background, Mr Kittmer, what measures will Defra take to ensure that the Trust is in a position, including a financial position, to take on the navigations currently the responsibility of the Environment Agency, which we understand is the next stage?

John Kittmer: Ministers have made a commitment to transfer the Environment Agency navigations subject to two conditions. One is affordability, and the second is of course the consent of the Trustees of Canal and River Trust (CRT) at that point in time. The affordability question will be racked up in the next Spending Review, so we will be bidding into the next
Spending Review in relation to the costs that will arise from the transfer.

Q7 Chair: Will the transfer include the staff who are currently with the Environment Agency in regional offices and across the country?
John Kittmer: There is much to be worked out, but that would be the normal understanding, yes.

Q8 Chair: So we will not be consulted at that stage?
John Kittmer: We will do consultation around the transfer in a way that is comparable to the consultation that we have done around this transfer as well. We will consult widely with our stakeholders, and indeed there will be some sort of Parliamentary Order, so we will need to have a proper consultation.

Chair: Some Parliament audit?
John Kittmer: A Parliamentary Order.

Q9 Chair: Will there be an Order under the Public Bodies Act?
John Kittmer: Again, there is quite a lot to work out, but that is certainly one option.

Q10 Chair: That is not very reassuring, Mr Kittmer. That is not exactly the sort of detail we would like to hear.
John Kittmer: Ministers have agreed this in principle. We will start to work out the way of doing this in 2013–14.

Q11 Iain McKenzie: Good morning panel. I shall introduce the Scottish question: what would you say are the implications and impact on Scottish Water of this proposed transfer?

Tony Hales: The Scottish Waterways have operated somewhat independently for some time. They have been funded directly from the Scottish Government, and management have therefore acted on the agenda of the Scottish Government. They have had the support, of course, of the resources from England and Wales, which they will no longer have, but they will find those resources through different means in Scotland, working with bodies in Scotland. This is an agenda that the Scottish Government wish to pursue, and we are entirely supportive of their agenda.

Q12 Thomas Docherty: Just to pick up on that last point, you said that in Scotland they will find alternatives. Is that that you have identified where they can find it, or that they will have to find it?
Tony Hales: If you like, it is not for us to identify. It is for Scottish management. They also have a shadow Board now in Scotland, which has been appointed by Scottish Ministers, ready to do the takeover. Yes, indeed they have: for example, they are working with Glasgow Council on the payroll system. They will be working more closely with Scottish Water on the asset management system. It is not for us in England and Wales to dictate how they do it. The Scottish Board have got on and done that, and I think they are well advanced.

Thomas Docherty: Thank you.
Chair: Thank you very much.

Q13 Neil Parish: Good morning, gentlemen. The Government will be handing over a great deal of assets to the CRT. John Kittmer, what sanctions will Defra have if its audit service is not satisfied about CRT’s delivery of public benefits?
John Kittmer: We have two types of sanction. One is connected with the performance mechanism, which I will describe first, if I may, and the second is in relation to more serious breach of the funding arrangement.

For the performance mechanism we have agreed with the CRT—this is set out in the heads of terms—a performance mechanism that identifies the three main areas of public benefit that we want the CRT to have due stewardship over: first, asset conditions—the condition of the network itself; secondly, the condition of the towpaths, which is the source of the principal public benefit; and thirdly, the condition of the assets that play the most important role in flood prevention.

We have agreed with the CRT that there will be an element of money set aside every year that will be tied in with performance against the standards on these three principal issues. We will receive data from the charity every year, and from 2015–16, £10 million will be released only if performance is satisfactory.

We have also, as is always done in contracts of this sort, reserved to ourselves the right to take more extreme measures if there is serious breach. Again, you will see those provisions set out in the heads of terms. If there were a serious breach of the funding agreement, or a serious breach of the statutory duties that we are transferring, subject to Parliamentary consent, we could withhold in whole or in part, temporarily or for a longer period of time, the funding we are making available.

Q14 Neil Parish: I am sure that the CRT would not do this, but if, for whatever reason, they were to sell off an asset that put an area at risk, would it not be a bit late by the time you got to audit, if that asset had been sold off?

John Kittmer: We have two forms of protection. There are two forms of assets that we are transferring. The network itself, the core infrastructure, will be transferred subject to trust. We are creating a trust—again, we have let you have a draft of the trust agreement, or a serious breach of the statutory duties that we are transferring, subject to Parliamentary consent, we could withhold in whole or in part, temporarily or for a longer period of time, the funding we are making available.

Q15 Chair: Will there be an Order under the Public Bodies Act?

John Kittmer: A Parliamentary Order.

Q16 Chair: We have two forms of protection. There are two forms of assets that we are transferring. The network itself, the core infrastructure, will be transferred subject to trust. We are creating a trust—again, we have let you have a draft of the trust agreement, or a serious breach of the statutory duties that we are transferring, subject to Parliamentary consent, we could withhold in whole or in part, temporarily or for a longer period of time, the funding we are making available.

Q17 John Kittmer: This is a very tight lock, and the expectation is that this land will not be sold, except in very exceptional circumstances. The second type of asset is commercial—the portfolio of property that BW has built up over the 50 years or so of its existence. The charity needs to have a degree of freedom over those, because this is a source of income. It needs to be able to generate income imaginatively from the property endowment. What we are agreeing with the CRT, as alluded to in BW’s

Q18 Chair: Will the transfer include the staff who are currently with the Environment Agency in regional offices and across the country?

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Thomas Docherty: Thank you.
Chair: Thank you very much.
memorandum and some of the other paperwork, is to create a protection system that will run throughout at least the period of the Defra financing—the next 15 years—under which both CRT and Defra will appoint a Protector, who will check that the medium-term investment statement—

Q15 Chair: I am sorry to interrupt, but we are coming on to the property section, so we do not want to pre-empt that.

John Kittmer: Okay.

Q16 Barry Gardiner: Mr Hales, this has been a long time coming. Let us go back to your projections in 2002. Can you tell the Committee what your stated aim in 2002 was for 2012, the year we are now in?

Tony Hales: I will be helped by my Chief Executive, but I believe one of the key things that we said in 2002 was that we did have a target on major assets: to have D and E asset classifications reduced to 15%.

Robin Evans: Our 2003 vision, which was your great challenge—I am not sure I can do it verbatim—was to grow the waterways, to double the number of visitors on the waterways, to become more self-sufficient, and to increase participation in the waterways. It was stated rather more elegantly than that.

Q17 Barry Gardiner: Let me remind you of two key phrases. One was to move to becoming largely self-sufficient, and the other was to have the waterways in a steady state.

Robin Evans: That was not part of our vision statement.

Q18 Barry Gardiner: My recollection, Mr Evans, is that it was. Mr Kittmer, you may recall from the Department that that was the understanding and the funding basis agreed in the last Spending Round, was it not—that the waterways would be moving towards a steady state?

John Kittmer: I am afraid that is before my time, Mr Gardiner.

Q19 Barry Gardiner: Before your time? Okay. Tell me, what has been the profile of your income against projection during the period from 2003 through to 2012—over that decade?

Robin Evans: I cannot give you exact figures off my head—I am very happy to provide them for you—but I would think that the profile is that our earned income has probably slightly exceeded our predictions, and our Government grant has underperformed, if that is the right word; we have had less, put together. More important than the income, we have taken a lot of action to control our costs and reduce our cost base. That has helped us as well.

Q20 Barry Gardiner: Indeed. What you are telling me is that, despite the fact that your income is slightly above what you projected in 2002–03, you have not yet moved the waterways to the point that you decided you would have them at by 2012, namely largely self-sufficient and in a steady state.

Robin Evans: I am afraid I do not think that was part of our vision statement. What we had agreed with Government in 2002 was that there would be only 12% of our big infrastructure assets—the aqueducts, bridges and reservoirs—in the poorest condition grade. That 12%, was the agreed target that Government and British Waterways had in 2002. That changed in 2007 to a holding state of 22% in the poorest asset grades, because Government accepted that the funding was not sufficient for us to move down towards that 12% target. The current target is 22% of assets in the poorest two condition grades.

Q21 Barry Gardiner: That was because, if I can put it this way, in the fat years, the years from 2002 to 2007, during which your Government and self-generated income outperformed, you used that money, as people were very pleased to see, to expand the waterways—to expand the network.

Robin Evans: No, no. That is not correct. We used that money to reduce the assets in the lowest condition grades from 30% down to about 24% or 23%.

Q22 Barry Gardiner: But you had also expanded the network to 2,200—

Tony Hales: With Heritage Lottery Fund money.

Robin Evans: With Heritage Lottery Fund money. Very little of the Government grant or our earned income went into that. Some did. Again, I cannot give you it exactly, but I suspect that no more than 10% of those costs were generated from British Waterways.

Q23 Barry Gardiner: If one expands the network, the costs of meeting the same percentage targets for repairs and maintenance of course rise, don’t they?

Robin Evans: They rise marginally, but generally, when you have had a restoration, the infrastructure you are taking on has just been repaired. It has just gone through a massive improvement, with new locks, new bridges, new aqueducts: everything has been restored and refurbished. We take them on in good condition grade, as it were, rather than poor condition grade and adding to our burden.

Tony Hales: I think in terms of that £150 million of income, only £2 million in any year would have gone towards restoration. Nearly all the other restoration came from third party sources, regional development authorities, Heritage Lottery Fund, and so on.

Q24 Barry Gardiner: I am talking about ongoing repairs and maintenance, though.

Tony Hales: Yes.

Robin Evans: We increased the network by 200%, which we are very proud to have done.

Barry Gardiner: Absolutely.

Tony Hales: 200 miles.

Robin Evans: 200 miles, sorry. Yes, inevitably there was an increase in maintenance, but that was done with everyone’s agreement, and the Millennium Commission and Government were delighted that we were doing that.

Q25 Barry Gardiner: Can I turn to the table that you have provided—the illustrative projections of additional resources from moving to civil society?
Robin Evans: Oh, right. The impact assessment.
Chair: It is in the impact assessment. I am not sure what page, but it is in the Government’s impact assessment.
Robin Evans: Yes.

Q26 Barry Gardiner: One of the things you have always said is that one of the key constraints you feel under the present arrangements is the way in which it constrains you from taking additional borrowing. Is that right?
Robin Evans: It is one of the factors.

Q27 Barry Gardiner: It is one of the factors. It is certainly one that sticks in my memory from the interlocution we had a few years ago. What surprised me in looking at this was just how tiny a factor it seems to be in your forward projection, so that even at the peak, it comprises scarcely £1 million in increased revenue. Can you explain that?
Robin Evans: I am sure my Chairman will have a lot to say about it too, but the world changed in 2008, and with the banking crisis there was a huge amount of risk. It was very difficult to borrow money for property. The whole appetite for borrowing has changed, and I think what we are reflecting here is a cautious view as to whether we want to go out and borrow money to the extent that we had in the past. What we are trying to do here is show that the Trust is viable, not make predictions and forecasts that are aggressive. They are prudent, and we think that is why—

Q28 Barry Gardiner: No, I am not disputing your prudence. What I am challenging, I suppose, is the motivation here, because it strikes me that this was always given as one of the key reasons for transforming the relationship between Government and British Waterways, because this would free you up. If you read the Committee Report, the seventh Report of the 2006–07 Session, you will remember that this was a factor you dwelt on in your evidence at that time quite substantially. What I am saying is, given that the world changed in 2008 and given that this forms now such a tiny amount of the increased revenue you are anticipating over the next 15-year period, the motivation or rationale for this change in the structured relationship must be different. What was the big motivating factor for this change has now disappeared. What is the new motivating factor for the change in the relationship?
Tony Hales: Let us take what is the motivating factor. The two motivating factors are to have a new source of income and our belief in a governance structure that takes responsibility and accountability much closer to the people who actually use and live by the waterways. We want to give it to the communities and the users, as opposed to, no matter how good they are, one Minister who changes regularly and the officials of Defra in Westminster. Borrowing provides some flexibility, particularly in the short term, in evening out—

Q29 Barry Gardiner: So it is to get closer to your customers.
Tony Hales: It is to get closer to our customers, and to give us a new source of income in terms of voluntary income.

Q30 Barry Gardiner: That is the other aspect that really puzzles me. In this illustrative projection of the additional resources, I do not see anything that says, “Land sales”. I do not see a bright red block or a black block that says “Land sales”.
Tony Hales: What we have is a dowry, £460 million of dowry, which is being transferred over in terms of property from Defra. One of their objectives, and indeed one of the objectives of the Trustees, is to maintain that for posterity, for the nation, as a source of income. Our aim is not to utilise our assets but to increase the income and grow our assets for the future of the Trust going forward.

Q31 Barry Gardiner: You will recall a conversation we had six years ago, when you advised me of the additional premium that could be obtained for development land that was on riparian land. What was that additional premium?
Tony Hales: The premium is 20% for people who live by their—
Barry Gardiner: I think in those days you told me 25.
Chair: We are coming on to property, so we will just do maintenance for now, if that is okay.
Barry Gardiner: I would like to pursue this, because these are—
Chair: Yes, but I think we are coming on to property. Could we do the maintenance for now?

Q32 Barry Gardiner: Chair, I will go with you. In terms of your projected income, the additional resources that you have here, Mr Kittmer, you have said in the impact assessment that “it is difficult to judge the degree of optimism of these projections”. I find that a disturbing statement from your impact assessment. What precisely do you mean by “difficult to judge the degree of optimism”?
John Kittmer: It is a statement of prudence, again. The projections in relation to, for example, charitable giving, as the impact assessment says, are dependent on some market research that was done—a degree of market research and some benchmarking against the Woodland Trust. This benchmarking and the market research were done after the events of 2008, so we think they are robust, but on an analysis like this there is always a degree of prudence that needs to be applied. We will not know how successful the charity is in raising money until it is liberated to start raising money. The fundraisers are in place. You will see that we have discounted the figures to 75% and used a 75% figure. There are other ways of looking at the sensitivity, but that is essentially what we have done. These are illustrative. We have to acknowledge that they are illustrative figures.

Q33 Barry Gardiner: They are illustrative—right. We have received from the Inland Waterways Association an estimate that it will cost some £40 million to address the dredging backlog, whilst £8 million is required each year on top of that to keep
the waterways in the steady state that we have always talked about. What does the Trust plan to spend on dredging each year, Mr Hales, and how will it address that backlog?

Tony Hales: The outlook in 2015–16 is that we have £10.9 million in our budget for dredging. It will then address some of the backlog. There will always be a backlog. We do not see in our current plans that we will resolve that total backlog. It does not mean that the waterways are not navigable; they are navigable, just not ideally navigable.

Barry Gardiner: I will leave it at that for now, Chair, thank you.

Q34 Thomas Docherty: Picking up on when you said “some of the backlog”, could you give us a proportion of the backlog that you would seek to have cleared in 2015?

Tony Hales: That is when we reach 2015. We will have another two difficult years ahead of us. That is quite clear. We do not expect to maintain the system at the current level over the next two years. We expect a very slight deterioration. It is then that the new money kicks in from Defra, and then we start to be more comfortable with our funding arrangements. The numbers are basically that it is about £2 million per year that we start to improve it by.

Q35 Thomas Docherty: That is helpful. What assurances can you give us that the Trust’s funding will be sufficient to maintain the waterways in an acceptable condition in the longer term, so particularly beyond the end of this decade, when the conditional grant has expired?

Tony Hales: All of our projections cover 15 years—we have a very robust asset management system, which has been tested with peer groups from the water companies and from other infrastructure companies—and those show our graphs going up: our asset condition deteriorating slightly in the first few years, but in the latter years going on an improving trend.

Q36 Thomas Docherty: You will obviously be aware that one of the powers that the Committee has is to effectively trigger an extension to the Order. What assessment have you made of the impact that such a triggering would have on confidence in the sector that you are wishing to attract?

Tony Hales: We are keen to launch the Trust in June. We did, but it was made very clear to us earlier that only a few years ago, at the turn of the century, we had 30% of our major infrastructure assets—the reservoirs and the aqueducts—in our poorest condition grades. We have got that down to just below 20%. At no stage does it rise above 22% in our calculations. This is relatively marginal. We have been very open in saying that there will be a relative deterioration from just under 20% to just over 20%, but nothing like what we have been used to in living memory. The waterways are in far better condition: they are very functional—30,000 people have boats on them, more than we have ever had before. Although we are being very open in that some of the conditions of the structures, the grades, will deteriorate slightly, we do not envisage that the waterways will become any less attractive, usable or safe.

Q37 Thomas Docherty: Is that because you have membership or friendship fees from people joining us.

Tony Hales: But we have people on standby. Each of the regional Waterway Partnerships is working on plans for their own launch in their own area, and we have some plans for a national launch. Those clearly have to be flexible in terms of the ultimate date, depending on where Parliament’s decision is, but it would be hugely helpful to us, and I think to the success of the Trust getting a good launch, if we can do this at the end of June and not be pushed back into the Olympic period or later in the year.

Robin Evans: The key bit is getting the public’s attention. We know that the public’s attention will be on the Jubilee at the beginning of June, and the public’s attention will be on the Olympics in July. If we want to launch something and capture some of the public’s attention, it has to be in that, otherwise we will probably have to wait until after the Olympics.

Thomas Docherty: Thank you.

Q38 Chair: Mr Evans, I think you are aware, even more than Mr Hales, of my personal interest in maintaining waterways. Why should it be acceptable to see a deterioration in the waterways over the next two years?

Robin Evans: We have to put this into context. I said earlier that only a few years ago, at the turn of the century, we had 30% of our major infrastructure assets—the reservoirs and the aqueducts—in our poorest condition grades. We have got that down to just below 20%. At no stage does it rise above 22% in our calculations. This is relatively marginal. We have been very open in saying that there will be a relative deterioration from just under 20% to just over 20%, but nothing like what we have been used to in living memory. The waterways are in far better condition: they are very functional—30,000 people have boats on them, more than we have ever had before. Although we are being very open in that some of the conditions of the structures, the grades, will deteriorate slightly, we do not envisage that the waterways will become any less attractive, usable or safe.

Q39 Chair: Why did you not argue that the Government should increase the funding now, rather than wait for two years?

Tony Hales: We did, but it was made very clear to us that, in the current Comprehensive Spending Review, this was a non-negotiable amount of money, so we needed to focus our attention in the outlying years and dealing with long-term infrastructure. We believe we can cope with a short-term issue. What is really a problem is if our funding is uncertain over a long period of time. What we have is 15 years of certain funding, which is an enormous bonus from where we have been historically. We have been down to some very short-term changes at times.

Q40 Chair: It worries me that the Inland Waterways Association say that the current expenditure on maintenance is half of what is needed to maintain the network from further deterioration, and that the funds are not sufficient to remedy any of the current backlog.

Robin Evans: I do not know whether that statement was made before or after the funding agreement was announced. I think it is more likely that was before
the funding agreement, when only the £39 million was on offer.

Q41 Chair: If we have established there is underfunding in maintenance, can I turn now to pensions liabilities? There is a plethora of documents, including a written ministerial statement on 31 January, showing that you will receive a £25 million one-off grant to be spread across the next few months and a capped last resort Government guarantee in relation to the historic public sector pension liability. What is the nature of the last resort Government guarantee?

Tony Hales: The last resort is that if in 19 years’ time the Trust is effectively bankrupt and unable to underwrite the pension fund, the Government guarantee will come into play.

Q42 Chair: To a limitless amount?

Tony Hales: £125 million.

Q43 Chair: Even after the £25 million, you will have a £40 million deficit. How concerned is the Trust about the significant pensions deficit that it will inherit from British Waterways now?

Tony Hales: It has always been built into our plan that there will be a payment as a recovery to the recovery plan. There is about £7 million a year of pension funding built into our plans.

Q44 Chair: What guarantee can you give us today that there will be no future increase in the pension fund deficit?

Tony Hales: I cannot, because mortality rates may change. The gilt-edged market may change. Previously the pension fund was separate from the Government pension fund; British Waterways were responsible for running that pension fund, and if it changed, British Waterways had to find the money to go into that fund.

Q45 Chair: What are the implications of the change?

Tony Hales: The implications of the change are that we have a very explicit guarantee, whereas before there was no explicit guarantee; and we have a £25 million down payment, which is extremely helpful. The greatest thing that we would like from a pension fund point of view is to see interest rates go up from their absolutely extraordinary historic low, where today there is a negative yield on index-linked gilts. If that goes up, then our liabilities fall.

Q46 Iain McKenzie: Mr Hales, do the Trust agreement and associated documents provide the right balance between protecting public assets, once they have been transferred to the third sector, and freedom for CRT to make investment decisions in a highly competitive property market?

Tony Hales: Yes. I think John Kittmer referred to this, and I alluded to it earlier. We have £460 million of property assets being transferred over. We have just sold our interest in Wood Wharf, which is one of our most valuable property investments, for a long-term income stream and also a capital sum of £50 million that will come in. We will then reinvest the £50 million over the next three years in other property investments. That is a particular example of our aim to continually rotate our portfolio to keep maximising value.

We are looking at getting a return on that property portfolio of about 7%, which is a reasonable return in the property market. It is a lot more than we could possibly get putting it into the bank, a building society or in the bond market. There is of course a commercial risk, which we feel we have the management expertise to handle. We are concerned about not leveraging that up too much, because the more we put leverage on, the more we increase the risk.

Q47 Iain McKenzie: To all the Panel, what do you feel are the criteria used for the appointment of the Protector? Will the Protector’s advice be made public?

Tony Hales: Yes. The Protector would be appointed jointly by the Department and by the Trust, and if there was a failure to agree the appointment, a professional body would nominate somebody. He will be a recognised surveyor, a very senior surveyor, who understands property and would review the investment principles in very much the same way that people review pension fund investment principles between a Trustee and the corporate. Yes, he would make his statements public.

Q48 Iain McKenzie: Other members of the panel, any comment?

Robin Evans: If I may say so, it is an elegant solution in that it gives the Trust freedom to operate commercially with its assets, its commercial properties, so that it can raise money for the Trust and operate in the market as it sees fit. At the same time the Protector makes sure that what were public assets are not squandered and badly invested or mismanaged by the Trust. The Protector will always oversee the working of the Trust, and if at any time the Protector thought that these commercial activities were in any way not protecting the commercial value of that dowry, he will notify the Secretary of State and the Secretary of State can take action. It is a very elegant solution, because it provides the freedom to operate within a very structured framework, and if the Trust goes outside it, they know they will be penalised.

Q49 Barry Gardiner: Picking up on that phrase “protecting the commercial value”, are there any other values that the Protector will be empowered to consider? Are there any environmental values? Are there any landscape values? Or will they only be commercial values that the Protector is empowered to consider?

Robin Evans: The Protector will primarily be concerned with maintaining the value of the dowry. The charity’s objectives cover things like heritage and the environment, so our charitable purposes require us to consider all those things in everything we do. But it would not be the Protector; it is more to do with our general governance. Acting within our charitable purposes would ensure that we gave proper account to those sorts of factors.
Q50 Barry Gardiner: If Government considered that your balance of priorities was wrong but that nonetheless the commercial value of the land that you were selling was protected and enhanced, they could do absolutely nothing to stop you developing that land?

Robin Evans: I do not think that is necessarily true. On a day-to-day basis, we will be meeting with Government. We have performance reporting and openness to Government, and Government will be our biggest funder. What they say and what they feel are very important to us. I do not think that they will be powerless. They will be very important influences on what we do, and if we seemed to be irritating or going against Government policy, that would be very serious for the Trust.

Q51 Barry Gardiner: But they will not have any power?

Robin Evans: I think there are other statutory powers. We have a statutory requirement to protect the environment. We will inherit that power from BW, so again there are statutory controls and obligations on the Trust through the statutory powers it inherits.

Chair: Thank you. Mr Kittmer?

John Kittmer: The grant agreement requires the charity to act in line with its statutory obligations. If there were serious and persistent breaches of statutory obligations, whether those are connected directly with the waterways or with their environmental obligations, that could be an issue in terms of withholding, as I was explaining, part or all of the funding agreement.

Chair: That is very helpful. Thank you.

Tony Hales: Local planners would have a lot to say in this, as well. For most of this commercial property, adding value to it would have to go through the local planning process.

Q52 Neil Parish: So Government could hold back funding if necessary?

John Kittmer: If it was very severe. It would have to be a serious and persistent breach.

Q53 Amber Rudd: I would like to pursue the concept of safeguarding services under the Trust. What assurances are provided in the Transfer Order and associated documentation that the Trust cannot use its reclassification power to downgrade the navigation status of waterways inappropriately?

Tony Hales: We cannot reclassify. We can recommend to the Secretary of State a reclassification, and we can put financial arguments to the Secretary of State, but we have no powers ourselves to reclassify.

Q54 Amber Rudd: I see, but do you feel that there is any risk of a downgrading of the current service provided in that arrangement?

Tony Hales: No. There tends to be some debate over certain freight routes where costs are higher than revenue. We are very keen to see freight grow. It is in our interest. The purpose of the Trust is to encourage the use of waterways and to grow the waterways, if we can find money from outside the Government funding. It is absolutely not our intention to go down that route. In the end, we do have to look at certain waterways, and if, for example, freight completely stopped on one of our waterways, it would seem economic nonsense to keep dredging to a greater depth than is necessary to meet the purpose that it was now being used for.

Q55 Amber Rudd: Do you have any plans to take measures to encourage freight to move more onto the water, away from roads?

Tony Hales: We will be setting up a new freight advisory body to advise the Trust and look at how we can develop it.

Q56 Amber Rudd: Given the need to increase funding to the Trust in coming years, should those using the waterways for navigation be concerned that the Trust will seek to raise licence fees and other charges as a consequence of all that we are discussing?

Tony Hales: First of all, we want to see more boats on the network, because that is one of our purposes.

Amber Rudd: Yes.

Tony Hales: We want to see more boats on the network, because that brings in more income. If we started putting up charges to an unreasonable level that drove boats off the network, it would both be against our main purpose and it would not be a commercially sensible thing to do. Frankly, there is no intention to increase boat licences at the moment by more than the rate of inflation.

Q57 Barry Gardiner: Going back to that bar chart, what is voluntary income net, the blue element of those bar charts?

Q58 Chair: It is on page six of the impact assessment.

Tony Hales: This will be before and after, gross and net. Essentially there is a cost in bringing in voluntary income, and that is the gross income less the net cost of—

Q59 Barry Gardiner: I know what the difference between gross and net is. What I am asking is: what is this voluntary income?

Robin Evans: This is the subscriptions that people will make towards the Canal and River Trust, £5 per month or £3 per month, to become a Friend of the Canal and River Trust, to support the work of the Trust.

Q60 Barry Gardiner: Okay. So none of this includes increased income from licences or berthing charges?

Tony Hales: No.

Robin Evans: No, because this is purely about the extra income that we will derive from our new status.

Q61 Barry Gardiner: From your new status?

Robin Evans: Not from continuing as we are.

Q62 Barry Gardiner: This Committee criticised you about five years ago for introducing berthing charges without warning. You will remember that. Your assurances on this need to be pretty solid now for
users of the network: that you are not intending to raise licence fees or berthing charges over the projected period, except, of course, in line with what one might imagine, with inflation, but there will be no substantial rise. You are not projecting in any of your figures that there will be a rise in those costs?

Robin Evans: We are not projecting any rises of that nature over the 15 years in our projections. I think that is entirely different from giving a guarantee to say there will be none. Sorry, I am just being advised that we have already announced that we are increasing our licence fees by inflation plus 2%. I am sorry, I forgot this. We announced that earlier this year. That is already on the cards, and that will happen for the next two years. Our forecasts take into account inflation and some growth in numbers. But I have to emphasise that cannot be a guarantee, because we simply do not know what will happen.

We also set our mooring prices in a very different way now from the way we did some years ago, because we now put our vacant moorings up for internet auction, which helps to guide the right market price. Something that we were always very criticised for in the past, that we did not put our own assessment of market price. We now have a very open system that dictates and demonstrates the market price.

Q63 George Eustice: I was going to come on to freedom of information requirements, but just before I do that: Mr Hales, you raise the point that if you did put charges up, you would potentially drive traffic off the waterways. Is there evidence how that would happen? Once people have invested in a boat, they have quite a capital stake in it. They are a captive audience, aren’t they? I just want to return to this point. If you do not achieve these voluntary subscriptions, and people are not quite as enthusiastic as you hoped to become voluntary members, will that then require you to look at these charges and fees as a way to plug your funding gap?

Robin Evans: I think you are right in that our research shows there is not much elasticity in it. Once you become a boat owner, you tolerate price increases because you still want a boat and everything else. But we are incredibly proud of having grown our boat numbers from 20,000 to 30,000, much more than at any time since the Industrial Revolution. It brings so much colour, vibrancy and activity to the waterways, which brings people onto the towpaths, which is where we will recruit them for the subscriptions. Having more boats is a virtuous circle. I think what Mr Hales was saying is that it is really against the Trust’s interest to see price rises to an extent where we see a reduction. Even though there may be some inelasticity and they will still be there, a cheerful, supportive, engaged boating community is what the Trust wants. It does not need a boating community that feels that we are out to price them off the waterways. It is not in our interest to do that.

Tony Hales: We have not really touched on the governance, in that there is the management there. They are subject to the Trustees, who are there to legally deliver the charitable objectives, but then there is the Council. We have just had four representatives of our licence holders announced yesterday as elected to that Council. The Council has the right to remove the Trustees. I am sure if they felt that the boating charges were being moved unreasonably, they would take a strong view and persuade the rest of the Council about their views.

Q64 George Eustice: Just on freedom of information, the Government has announced the approach it will take with the CRT, which is a much narrower approach than is currently the case under the existing system. Do you accept some of those criticisms? I know Private Eye, particularly, have run a campaign on this, saying that it is effectively public money now but the body will not be open to the same degree of scrutiny through FOI.

John Kittmer: Should I pick that up? The Private Eye campaign, as I remember it, was before the Government had decided which of the three options that it publicly consulted on it would follow. What we have done is to propose, through the Transfer Order, a limited application of the Freedom of Information Act, but it is not strictly true to say that it is a narrow definition. It is essentially the same as the core business now. All the activities of the waterways will be transferred through the Transfer Order, and everything that is transferred through the Order is up for grabs in terms of freedom of information. You will be able, as a member of the public, to write in and ask about dredging, vegetation management, asset condition and repair, just as you can do now. The Government decision carves out from the application of the Freedom of Information Act things that are now not subject to the Act—the charitable activities of the CRT. The CRT’s fundraising will not be within scope of the FOI provisions. That is largely because we were convinced by the arguments that we should try to achieve a level playing field with other charities, and we should rely on the governance mechanisms of the charity itself, which will vastly increase the transparency and contestability of the actions of the management and indeed the Board of Trustees. We think we have a very good balance between protecting the existing provisions of the Freedom of Information Act and finding equally robust but different transparency mechanisms for those things that are the charity’s business.

Q65 George Eustice: Give me an example of what that would entail that is not there now. Are you talking about minutes of meetings and things like that?

John Kittmer: I am sure the CRT will publish the Board’s minutes.

Tony Hales: And have done.

John Kittmer: Indeed, you can find them on the CRT website now. They will do so because they are an open charity rather than as a result of the FOI. There will be some business that the CRT Board of Trustees conducts, in relation to, say, the Waterways Infrastructure Trust—which is the permanent network—that, as already explained, we are transferring—that will come within the scope of the FOI regime anyway. They would be accountable to some things through the FOI regime, and others through general provisions of charity law and good practice.
Q66 Thomas Docherty: Mr Kittmer, obviously there was a consultation on the proposed abolition of the Inland Waterways Advisory Council (IWAC)—lots of abbreviations here. Whilst there was a pretty low response rate, the clear majority of respondents felt that it was useful to keep IWAC during at least the transition phase. Can you tell the Committee why Defra does not propose to provide that?

John Kittmer: There are a number of reasons. First and foremost, unless they see, according to the three tests that they established, that there is a real case for independent advice from a statutory body, Ministers have decided that they expect the Civil Service to generate advice, and to generate advice outside the Civil Service as well, by of course talking to our stakeholders and to external opinion formers.

In the case of IWAC, you are right. Mr Docherty: there was a majority of the very few people who wrote in on this subject in favour of keeping the body, at least transitionally for two years, and we did think long and hard about doing so. It costs us £200,000 a year to run IWAC. As already explained in the question from the Chair, we will start to look at the Environment Agency (EA) navigations in 2013–14. We have already made very strong commitments to our stakeholders that we will draw them into the fold. We will talk extensively with the CRT. I am sure it will be busy in its Council and in its Waterway Partnerships as well, giving us advice on this. If, over and above the existing advice that is available to us, we think we need independent advice, we will commission it ad hoc. That is essentially what Ministers have decided they want to do in this sort of field. But we will consult publicly on the EA navigations.

Tony Hales: We have 150 people coming in now to act as governors of the waterways, if you take all the regional partnerships and the Council. The budgets of each of our waterways managers will be subject to the scrutiny of their regional Waterway Partnership. At the national level, the Council will be looking at our budget. There is a change. Yes, of course, the Department is stepping back. This is about central Government having less influence and less day-to-day control. There are 150 new people out there who have a particular passion, who are standing up as volunteers, and they will be scrutinising what the Trust does.

Q67 Thomas Docherty: Finally, Mr Kittmer, you touched on the fact that there was such a low response rate—I think it was only one-tenth of the one that we saw for FW. How has Defra tried to engage and fill that gap, so to speak?

John Kittmer: Throughout this conjoined process of working out the transfer of the waterways and the abolition of IWAC, we have engaged very closely with stakeholders. We have had numerous meetings with them. We have a core stakeholder group—I say core, but it is a large group of about 20—which we see frequently. We also talk to the broader navigation authorities, through their collective body, The Association of Inland Navigation Authorities (AINA), and we have had meetings where we have brought in all of the navigation authorities to see us.

Since Ministers confirmed the abolition of IWAC, we have had numerous offers from our stakeholders to come in and talk to us whenever, particularly of course around the known project of the EA navigations. There is a lot of goodwill for us to continue the very good and close working that we have done with stakeholders on this project, and we will continue to do so. It has been very valuable for us. We have very engaged stakeholders. They have helped us enormously to improve the proposal that we made in March of last year, and we will want to continue that.

Thomas Docherty: Thank you.

Q68 Chair: Finally, Mr Hales and Mr Evans, relating to both the outstanding issues that you have mentioned today, and to which the Minister refers in his written statement, how much are we, as a Committee, taking on trust that all will go smoothly?

Tony Hales: I hope we have given you enough reassurance. This has been an incredibly participative process, and I think there is a lot of trust there. It is only minor detail that remains to be resolved now.

Chair: Thank you very much indeed, all of you, for participating and being so generous with your time. We are very grateful. Thank you very much indeed.

Examination of Witnesses

Witnesses: Clive Henderson, Chairman, Inland Waterways Association, and Howard Pridding, Executive Director, British Marine Federation, gave evidence.

Q69 Chair: Welcome and thank you very much for participating. As I mentioned earlier, this is very much a new territory for Parliament and for the Committee. Would each of you in turn like to introduce yourselves and your position for the record?

Clive Henderson: I am Clive Henderson. I wear many hats within the waterways sense. I am the national Chairman of the Inlands Waterways Association, which is a charity founded in 1946. We currently have about 17,000 members with varied interests, all relating to the waterways. About 18 months ago I was elected Chairman of the British Waterways Advisory Forum, and about two years ago the Minister appointed me to the Board of British Waterways as an observer, to effectively help them and hand-hold them on this process towards joining the third sector. As of yesterday I was advised that I was elected as a user representative on the Council of the CRT.

Howard Pridding: I am Howard Pridding. I am the Executive Director of the British Marine Federation, which is the national trade association for the leisure marine industry. About 40% of our members have
businesses on the inland waterways of the country. I am also a member of the British Waterways Advisory Forum, and a former Chairman of the BWAF. It is not quite the esteemed track record that Clive has.

Q71 Chair: Before I turn to more general questions, I would like to raise with each of you the concerns that we have highlighted about the lack of maintenance funding and the potential deterioration in the waterways in the next two years. I notice that you made some comments in your written statement, Mr Henderson, and so did you, Mr Pridding. Would you like to comment for us on those points?

Clive Henderson: I think you may have mentioned earlier on that the funding available for maintenance is half what is needed. I do not think it is quite that severe. I think we are saying that it is £20 million per annum short of what it needs to achieve this concept of the steady state, but that is not a new problem. We have been dealing with that for a while. The problem has been, particularly in dredging, which has already come up, that the bottom has become too close to the top in certain waterways in certain areas, and you can only dredge as you go along, with the number of dredgers that are available. You cannot suddenly dredge the whole system overnight. It has to be a planned programme, and that has been behind schedule for some time, as has been acknowledged. I think the chart in the impact assessment on page 17, which shows the real-term funding from the Government, illustrates historically why that has happened. We have watched the Government grant reduce year on year. We have watched British Waterways try to become more efficient and reorganise itself, but it has suffered badly from very short-term activities in terms of cutting staff and maintenance projects, etc., in-year to cope with the variable funding levels, which have all been on a downward trend for some time. With the certainty we will have from the new funding package, hopefully we will see a real plan to attack the backlog. We are confident that can happen.

Chair: Mr Pridding?

Howard Pridding: In our evidence we stressed how important maintaining navigation is to our members’ businesses. If there is no water in the canal, if boats cannot float, our members do not have a business. It is a very important area. Money is tight, we know that. The Government settlement was welcome. As a representative body for the industry, we will be looking to work very closely with British Waterways to make sure that we are prioritising and maintaining the waterways that are so important to our members’ businesses.

Q72 Chair: Thank you. Do you have any concerns about the proposal for the Canal and River Trust to eventually take on the navigations currently the responsibility of the Environment Agency?

Clive Henderson: Only the concerns that relate to the risk that it may not happen. My organisation would certainly support that transfer. It is a long-held vision. We are the elder statesman organisation; we were founded in 1946, as I said, and the waterways were not even nationalised until 1948. We outline every other representative body of waterway users. It has been a vision to have a proper national authority, with user input and participation, to make the most of what the waterways are for this country.

Howard Pridding: We brought together members who operate on the canal network, the navigable rivers and the Norfolk and Suffolk Broads at the start of this debate to try to reach a united industry position. Part of that was that we believed that the EA navigation should be part of the new charity. The industry would like to see it within the CRT.

Q73 Chair: Excellent. Do either of you have any concerns in principle about the transfer of British Waterways’ functions to a third sector organisation?

Clive Henderson: We have no reservations. As Mr Kittmer illustrated earlier, this is effectively a joint shared project. We have worked very closely together during the last 18 months or two years to bring this about, and any concerns we have raised along the way have been addressed to our satisfaction.

Howard Pridding: Similarly, we have been heavily involved in the debate since the outset, and last week, with other stakeholders, we had the opportunity to look at the detail of the Order, with Defra officials, Defra lawyers and the Chief Executive of British Waterways, and I think we were satisfied that it provides the necessary protections.

Q74 Chair: Do you think that the draft Transfer Order to the Canals and River Trust broadly meets your expectations as to the protections in place for the users of waterways, Mr Henderson?

Clive Henderson: Do you want to go?

Howard Pridding: I think we do. My previous answer was intended to illustrate that. We have been through the detail, and we are satisfied that there are protections there, both for the industry and for our customers, the boat users.

Clive Henderson: For users, we are inheriting almost what we had before. We are not expecting it to get any better, but where we have sought protection, it has been effectively encompassed within it.

Chair: That is very helpful, thank you.

Q75 Barry Gardiner: I want to talk about the voluntary funding, but before that, can I just pick up on something you said about the graph—figure 1—on page 17? Just for clarification, that is a fairly selective graph, isn’t it? It starts at what was the peak of funding, and belies the fact that the highest level of Government funding was between 1996–97 and 2006. Would you confirm that it was predicated on the needs of the network—to bring the network back into a much better state of repair at the time?

Clive Henderson: Oh, yes, I would happily acknowledge that those peaks were to effectively put right the major decline of the state of the category D and E assets, not only to bring those back to manageable problems but to resolve safety issues as well.

Q76 Barry Gardiner: And very successfully, too.

Clive Henderson: Absolutely, yes.
Q77 Barry Gardiner: I know your members were very pleased at the result of that. Over that period, also, whilst the Government funding then reverted to historic levels, the income for British Waterways as a whole has been substantially increased, hasn’t it?

Clive Henderson: Absolutely, yes. You raised earlier on the 2002 vision for 2012. At that time Government funding was far more than 50% of British Waterways’ funding, and during that time they have actively sought to increase the income from the investment property assets and to become more efficient. The headcount now is 1,600 or 1,700. In those days it was 2,700. We have seen actions on the ground. Sometimes that has perhaps affected the service levels to our members, but I think they have been understandable and accepted.

Q78 Barry Gardiner: Are you disappointed that, despite the fact that the funding levels have been higher than projected in 2002, the actual objectives stated at that time with regard to your members and the steady state of the network have not been achieved?

Clive Henderson: The direction of travel on managing the major assets has been in the right direction.

Q79 Barry Gardiner: Broadly right?

Clive Henderson: One of the items that we raise with them all the time is the specific examples. It is easy to look at a graph and look at a percentage, but they are individual aqueducts and embankments, etc., that historically we have had concerns—

Q80 Barry Gardiner: I think we would all agree that it has been the right direction of travel, but what I am seeking to tease out from you, if I may, Mr Henderson, is the level of confidence that you might have, given what has happened in the past with projections made by British Waterways—their projections for the next 14 years, in particular the significant increases in voluntary funding. Do you think those projections are realistic, particularly in terms of how much money can be raised by fundraising, or do you share the impact assessment’s difficulty of judging the degree of optimism that British Waterways has adopted?

Clive Henderson: We are stepping out into the unknown. We are advised by the people who prepare these projections of income that they are conservative. At least two of the transition Trustees of the shadow CRT are specialists in national charities and major fundraising organisations, and they looked at this area in detail themselves to gain comfort when they first came on board. They have comforted their colleagues and users such as us that there is prudence in these figures already. The figures are not unrealistic, provided that the world does not change or become too bad, under current known issues—the “known knowns”—these are achievable with goodwill out there.

Howard Pridding: I just wanted to add a couple of comments so hopefully you will have a bit more confidence in this area. Like every stakeholder, we were very concerned about it. It is an unknown, as Clive has said. At the outset I had concerns. I was unsure of the science behind this, but I think British Waterways were very open and transparent in this area about how they made their projections and forecasts. I think they took on a senior person with a charitable fundraising background, which helped. Perhaps for me the most important thing was that the interim Trustees, many of whom are people very experienced in charities, have scrutinised them. We have had conversations with them that give us much more confidence in the forecast going forward.

Q81 Barry Gardiner: Have you advised your members that, of the £12.5 million predicted additional income from the change in structure of moving to civil society—with the exception of the additional returns from new borrowing and the rate relief that one assumes would take place anyway, which is just under £2 million—£10.5 million of their projections would, if not realised, have to be funded by your members through increased berthing charges and licence fees?

Clive Henderson: I have not advised my members along those lines, because I think there is always a danger that we would damage the proposition and the product if we were to set scarfs running amongst the boating users and the potential boating users who have not even discovered the joys of the waterways.

Q82 Barry Gardiner: But that is a fact, isn’t it?

Clive Henderson: We have until 2026 on this. But I would like to emphasise that, if the funding was not available from the blue bands on these charts, some things would not get done. There would have to be cutbacks in expenditure. Some of this is additional funding—well, it is all additional funding to what is there now, and it will make a difference. It will improve the waterways and make them better, and hopefully get some restoration of more miles. We have had 500 miles of waterway come back into use through restoration activities of volunteers and other organisations working together. We expect some of this to be translated into improving and enhancing the network. On the green figures on there, which is the monetary value of volunteer effort, I confidently expect that to be completely understated. We will achieve massively more than that.

Q83 Barry Gardiner: Very good. So you have no fears that, as British Waterways moves to become a charity, instead of becoming a charity it will de facto become a property company with rivers attached?

Clive Henderson: I have no fears along those lines. I think we know enough about their ambitions.

Barry Gardiner: Thank you.

Q84 Chair: We heard about the pension shortfall, which will be running a £40 million deficit and an ongoing, I think, £7 million a year. Do you have any concerns about how this will be funded, as stakeholders?

Howard Pridding: The pensions issue was obviously a big concern at the outset. The announcement of the Government contract and the money to address this
gave comfort. We did not want the charity to start with a major handicap of pensions liability.

Q85 Chair: But it will be £40 million deficit after the £25 million.

Howard Pridding: That is true, but people are more reassured since the announcement of the Government contract that this issue is being properly managed.

Clive Henderson: It is a concern, because it is quite a large deficit. It is effectively historic: it is no fault of the current management, probably, and certainly not attributable to the Trustees of this new charity. But they will have to effectively take the £39 million per annum and effectively pass over £5 million or £6 million of it each year to reduce the scale of the past deficit. It is unfortunate that the Government money going into the grant is not effectively reaching the waterways as such. It is pre-accounted for.

Chair: Thank you. That is helpful.

Q86 Neil Parish: Good morning—or good afternoon, I think it is now. Mr Henderson, are you as confident as Defra appears to be from its impact assessment that volunteers can be recruited and retained to realise the estimated efficiencies cited in the impact assessment?

Clive Henderson: I am extremely confident, as I said before. The scale of the green band, the monetary value of the volunteer effort, is likely to be understated here rather than overstated. Provided they are welcomed, trained and given useful, rewarding tasks to do, volunteers will continue to want to be involved. This is quite an easy sell. The waterways of Britain are wonderful things. You are not asking people to go along and clear the sewers out, or go and work in a shelter somewhere feeding the homeless.

There is nothing wrong with those activities, but this is a much nicer and more enjoyable and more rewarding opportunity to get involved with.

Chair: Thank you. That is helpful.

Q87 Neil Parish: I would agree with you that the waterways are a great asset. We are naturally looking to see how they will be managed in the future. Are you confident that volunteers are more likely to volunteer for a charity than they are at the moment for a Government body? Will that have any effect, do you think?

Clive Henderson: I think that will have a drastic effect. British Waterways are currently auctioning some of the prime moorings in London for the Olympic period, and most people will say, “Why would I pay that much to hand it over to British Waterways?” I suspect come July, hopefully, on this timescale, people will be much more willing and see that they are supporting a charity. They are getting a nice mooring in London, and their money is not being thrown at British Waterways but going into the new charity.

Q88 Neil Parish: Under your new management plans with CRT, you will need more volunteers to do a lot of the work. Are you confident that will happen?

Clive Henderson: The use of volunteers is aimed at making the network better, rather than taking the existing employees’ jobs from them. That has been a concern of the employees, I know. I think they are now satisfied that is no longer a concern; they have reached agreement with all the workers’ representatives. It is trying to make it a better waterways network, more enjoyable, and welcoming visitors, particularly overseas visitors who come and hire a boat from one of Howard’s members, to bring the UK visitor economy up. It is much more useful if they are met at their first lock flight by somebody. They can get help if they want it or can be shown how to use a lock flight if need be. At the moment, British Waterways do not have the spare staff or resources to be a tourist information service.

Neil Parish: Thank you very much.

Q89 Chair: In terms of the economic downturn, is the cost of travelling to work as a volunteer a concern?

Clive Henderson: Yes, I think it is. Clearly we do not just want volunteers who are in the affluent band—the early retirees—who can afford to do this. We want to make it community-based, and the communities along the waterways vary in their economic circumstances. I think there will be a need at times to help and support volunteers when they come along, particularly what one might call the NEET generation. There are many people out there who can come along, find something that interests them, get engaged with it as a volunteer, and also learn some skills and the discipline of getting up in the morning. There are a lot of case studies now; some fantastic work has been going on around the country over the last couple of years involving British Waterways and Groundwork, etc., in getting in otherwise disaffected young people and giving them something to do, and working with young offenders as well. They make a positive difference to something, which they are then proud of. They bring their families down at the weekends to show them the good work they have done in painting lock gates. Under supervision, they have learned to paint.

Howard Pridding: I think there is an immense passion for the waterways amongst those people who enjoy them, and that will be harnessed by the new charity, both in volunteering and in charitable giving. We are all very keen to get on with it and prove that fact.

Chair: Thank you very much.

Q90 Chair: In terms of supporting that, Mr Henderson, which budget will that come from?

Clive Henderson: That would come from the general resources within the Trust itself. They will obviously weigh up the costs and benefits of individual projects, but they will be working with others. There is other funding out there to try to get some of this generation working, and to become involved with young offenders and older offenders as well. There are other schemes and projects, and the new Trust will be a perfect vehicle to work with them. It is a nationwide operation in its geographical spread at the moment, so it could really learn lessons in one area and translate them to replicate them elsewhere.

Chair: Thank you very much.

Q91 George Eustice: A point that Mr Gardiner touched on earlier was the potential for increased reliance on commercial property for income. Are there concerns from users of the waterways that this might
undermine the ethos of the CRT in some way and, in particular, might it lead to more development alongside waterways if some of those properties were developed and sold? **Howard Pridding:** I will start. First of all, the property portfolio is essential to the success of the charity going forward. British Waterways are very experienced in this area. We need to understand that the philosophy is that the money made from property is spent for the benefit of navigation. I believe British Waterways understand the importance of access to the water and the boating facilities that boaters need. When it comes to individual developments, if we have any concerns in those areas as an industry, or indeed as boat users, we would make our representations known to the new charity, as we do now with British Waterways.

**Clive Henderson:** Working together on a construction plan does really deliver urban regeneration in certain towns and cities around the country, and the checklist of examples that have already succeeded and made a real difference to those communities are there on the books. There are many other people, towns and locations that aspire to copy that and join with it. Some of the investment property opportunities will be within the CRT, and some will be with third parties that are already out there working together with the Trust. I do not see that there is a problem. The commerciality that one needs to make sure that the endowment is protected and its value increases over time is not incompatible with the charity, which will get the benefits of that appreciation.

**Q92 George Eustice:** Will it create a culture where there is more pressure for you to concede to things that you might have concerns about? If you say, “We have a concern about this,” and the answer is, “I am afraid if we do not do this, there is no money; therefore, we will not be able to do all these other things that you might want.” You might feel under pressure to go along with things that you otherwise might not have done.

**Clive Henderson:** We live in the real world. We have to accept that there is a price and a value for everything. Within the urban areas, provided what is put up is in keeping with the waterway corridor and does not detract from it and ruin it, we would be supportive. If the rural sections were under threat, with proposals to make three miles of housing estate either side because people enjoy looking at the water, we would be concerned. We would be concerned prior to and post the setting up of the Trust that a unique waterway environment perhaps has not been known to the new charity, as we do now with British Waterways.

**Howard Pridding:** I would stress that there is a consultation process and a dialogue. Of course not everyone is happy with every development that British Waterways do, but at the end of the day they do understand that boats are integral to the enjoyment of the waterways. Often it is mixed developments that are needed, but there is a process and an understanding there that will go forward with the new charity.

**Q93 Barry Gardiner:** Of course we have had no projection of the revenue income from the property portfolio from British Waterways, and I understand that in order to transfer the powers to the Trust, the Minister will have to make a transfer scheme using powers under Section 23(1)(a) of the Public Bodies Act. As yet, that has not been made public. Why do you think that there are those two great big blanks at a time when the Government and Parliament has to take a decision in principle to go ahead with this, and we have heard such alacrity on the part of British Waterways that it should not be delayed? We would have to take that decision today without that information, wouldn’t we?

**Clive Henderson:** If it is not available, I guess you would have to reach that decision. The investment property portfolio, as Mr Hales said earlier, is running at approaching 8% on average across the portfolio, which when it is benchmarked against its peer equivalent property companies, comes out very well.

**Q94 Barry Gardiner:** You sit on the Board, don’t you, Mr Henderson?

**Clive Henderson:** Yes.

**Q95 Barry Gardiner:** So you will have seen the projections that British Waterways have for the future income from the property portfolio.

**Clive Henderson:** Yes. I have. Under the confidentiality agreement, I probably could not tell you, but I do not remember the detail anyway.

**Q96 Barry Gardiner:** What you are saying is that they are confidential and you could not share them with this Committee?

**Clive Henderson:** No, no. The target rate of return that they look for in a new investment property portfolio, the benchmark, is a minimum of about 8%. They ignore proposals that would not deliver that.

**Q97 Barry Gardiner:** I am not asking about the rate of return, am I? I am asking about the income.

**Clive Henderson:** I think the rate of return generally turns into income. These are rental incomes that they are talking about, not capital gains. There are other development opportunities where the return that they look for is much higher than 8%, to cover the risk involved in a development. We are talking about the rental incomes of many existing properties, many of which are nowhere near the waterways. They are investment properties.

**Q98 Barry Gardiner:** Does it not strike you as strange that we have had very clear projections about the additional resources that will be achieved from moving to civil society—from volunteering and all sorts of other rate reliefs and savings—but we have not had any hard information from you about the projected revenue that will come in from the property portfolio?

**Clive Henderson:** But it would not be coming from me.
Q99 Barry Gardiner: You are a Board member.
Clive Henderson: I am not a Board Member. I am an observer on the Board.
Barry Gardiner: Sorry?
Clive Henderson: I am an observer on the Board.
Barry Gardiner: Sorry—a Board observer.
Clive Henderson: I can sit and listen, and I sometimes speak. In the current marketplace, I suspect it would be a brave man who would put his hand on his heart and put in really firm commitments. You can only put in assumptions that the property market will continue to be almost in the doldrums. The property market is nowhere near as good as it was four or five years ago, when it was producing a bigger contribution.

Q100 Barry Gardiner: So what does that tell us about table 1, the illustration of the funding profile going forward? Sorry, in fairness to table 1, it is the grant funding, but what does that tell you about the security of the information about the revenues that the Trust will have going forward?
Clive Henderson: There is no property income included.
Barry Gardiner: No, indeed—sorry.

Q101 Chair: With respect, this is probably something we could direct more fruitfully at Defra. We could do it in writing. It is probably not for Mr Henderson to answer.
Howard Pridding: It is very difficult for a stakeholder to comment. It is appropriate, I think, for a Defra official or Minister to comment. All I would say is that all we can look to is BW’s track record in this area, and I believe we have confidence.
Barry Gardiner: Thank you.
Chair: Thank you very much.

Q102 Amber Rudd: Regarding safeguarding of services, if I may, are you satisfied that the Transfer Order and associated documentation provide sufficient protection against the inappropriate use by CRT of its advisory role to reclassify and power to downgrade the navigation status of the waterways?
Clive Henderson: I am confident that they are most unlikely to abuse the powers available to them, because as Mr Evans said earlier, boating is the lifeblood, and usage of the waterways is essential. If you downgraded, you will probably deter boats from coming. You might at the same time save on some maintenance costs, but you would damage the long-term viability of the whole network, because each part of the network depends upon the other adjacent parts being open and available for usage by boats of the local standard and size.
Howard Pridding: It is an important issue, because any curtailment of waterways for use by people is detrimental to the enjoyment of the waterways and our members’ interests. My understanding is that the Order transfers the powers to the charity, so nothing is changing here. As part of that, if the new charity did wish to downgrade a waterway, they must seek the permission of the Secretary of State, and the Secretary of State has the responsibility to consult with stakeholders. That gives us the protection that we are looking for.

Q103 Amber Rudd: What about a potential rise in licence fees to take account of increased costs? Do you think that the users might be vulnerable to that?
Howard Pridding: It is always an option, but as has been said previously, British Waterways understand that it will not be in the interests of the charity to start pricing people off the waterways. Again, with any licence increase there is always a consultation process, and we will have that dialogue.
Clive Henderson: Our members have lived with that scenario for many years anyway, so I do not think anything is particularly going to change. If there is an unrealistic, unjustified increase in licence fees, it will inevitably see a decline in boat numbers, which would be counter to the whole concept of this charity, which has maintenance of navigation at its core.
Amber Rudd: Thank you very much.

Q104 George Eustice: I would like to ask about access to towpaths and access rights. There were concerns raised by some that these might be affected. The Government has explicitly safeguarded access rights for pedestrians, but I wondered if you thought the same upfront assurances should be given for cyclists as well?
Clive Henderson: They were not given because cycling on towpaths is quite a big issue. In some areas it is permitted, in some areas it is banned, and in some areas a blind eye is turned to safe, responsible cycling. If a cyclist is travelling at five miles per hour on a grassy piece of towpath with an un-made-up surface, provided they travel safely and carefully and the width and the condition of the surface is safe, there is nothing wrong with that in my view. That is why a blind eye is turned. If lycra-clad mountain bikers or racers travel along that same stretch and come across a person pushing a disabled relative in a wheelchair, or a mother pushing somebody in a pushchair, that is where the risks come about, especially if sitting on the towpath is a fisherman with his tackle box, and things like that.
Not all of the towpaths are the same. There are inner-city ones that are almost too popular. Some of the towpaths in London are very dangerous because there are almost too many cyclists, going too fast. The balance of safe, responsible use has to be established, which is why I think they are perhaps not given exactly the same right of access as walkers. It has to be responsible cycling in the right areas.

Q105 George Eustice: You can understand that if you were a cyclist, what you have just said would cause concern, because it suggests that there might be a change from the current position. As you say, there may be some where they discourage cycling or turn a blind eye to it.
Clive Henderson: No, I do not think that would be a change from the current position. That is what it is now. Responsible cyclists are welcomed onto the
waterways. There are some areas of the country where the known limitations of the condition and width of the towpath are recognised, and cycling groups and Sustrans have worked together to get funding to improve those areas—to create corridors where there is a safe cycleway incorporated in the towpath. We would support that in the right areas. We would not like the towpaths of the whole country to be tarmac. It would change the visual and natural aspect of what we are talking about.

Q106 George Eustice: I think it was agreed that CRT would also publish policies on free access for pedestrians and cyclists, which would enable them to differentiate between different types of towpath?

Clive Henderson: Yes. Yes.

Q107 George Eustice: Are those being done?

Clive Henderson: Those are still in development. We have seen early versions, and there have been over the years policies for the two groups living together. Within London there is a “Two Tings” campaign, where cyclists are encouraged to ring their bell twice to alert people who are walking that they are coming up behind. That requires cyclists to have bells on their bicycles, which not many of them do, unfortunately. There are issues, and they are being developed, and I am sure happiness will ensue, as long as people are not saying, “I am in training for the next Olympics as a racing cyclist, and I want to use the towpaths for that.” That is incompatible, full stop.

Q108 Chair: They have left it a bit late to train.

Clive Henderson: The next Olympics—the one after this year’s.

Chair: Thank you very much indeed.

Q109 Neil Parish: Can I question you both now on governance? Do you consider the provisions for CRT’s governance set out in the transfer document to be sufficiently robust to ensure transparency and accountability in the Trust’s operation?

Howard Pridding: If you look at our evidence, the industry’s role in governance was one of the key issues for us. In our first look at the governance, it seemed cumbersome. Again, this is one area where there was expertise among the interim Trustees who were appointed, and I think the governance structure will work. The British Marine Federation is looking to make sure that the industry is represented at every level, particularly the Waterway Partnerships. Yes, we are comfortable with the governance structure as it is proposed.

Clive Henderson: Yes. I would agree with most of that. I think the Waterway Partnerships are the key to making this work, because that is local and will get users at local level, and the communities through which the waterways pass, involved in what they want from their waterways.

Q110 Neil Parish: I see that CRT interim Trustees agreed to increase the number of Council members directly elected over time. What do they mean by “over time”? Is this one year, 20 years, 100 years?

Clive Henderson: The appointees that have just been elected, where there are elected members, effectively had constituencies, that is boating users—there are four representatives—two from the trade and one from the employee group. They had a database of who made up those constituencies. I think the press release yesterday said, in announcing these seven elected members of the Council, that by the time their term of office comes to an end in four years, they are expecting 50% of the Board will be elected from the other groups—the heritage groups and the wildlife groups—which at the moment are nominations.

Q111 Neil Parish: Right. So you see a four-year turnover, as these existing jobs come up for re-election?

Clive Henderson: I would mentally put four years as the target for when we would expect to see more people elected to the Council.

Neil Parish: Thank you.

Q112 Chair: On the abolition of the Inland Waterways Advisory Council, I understand that the vast majority of the responses did not support the proposal to abolish IWAC. Mr Pridding, were you surprised that the Government nevertheless went ahead and agreed to abolish the work of the Advisory Council?

Clive Henderson: I was not surprised that they had gone ahead with the proposals to do it. I suspect it was inevitable they would. A body like IWAC produced some good things in terms of research and validation of things that generally supported the waterways, bearing in mind they also looked at the totality of the waterways of the UK, and not just the waterways run by British Waterways and to be run by CRT, which is only 40% of the waterways. My organisation is concerned that the Minister and Defra feel that they no longer need advice from such a learned group, but I was not surprised. I would now see it as inevitable, but in terms of the independence and the research, we will be perhaps slightly poorer for its loss. Equally it must be recognised that some of the works of IWAC over the years have led to this particular project becoming a reality. They have supported it.

Howard Pridding: I believe that IWAC has performed a strong role over the years, and indeed many members of the industry have served on IWAC over the years, but the Government has taken that decision. I think cost was one of the reasons, in particular, for why it would not continue for a short period until the charity got going. We stressed in our response that there are national organisations, like us and the IWA, who have the experience that Ministers and the charity can now call on. That is what we hope will happen—that the charity and Ministers and Defra officials will continue to tap into the expertise that is out there.

Q113 Chair: Mr Pridding, the BMF did suggest that the membership of IWAC could be incorporated into the expert advisory groups. Have you had any reassurance that will be the case?
Howard Pridding: Those groups have and are being formed. I am not clear on exactly the make-up of those groups at the moment. I would hope that they have tapped into that expertise.

Q114 Chair: Thank you. Could I just ask on implications for other consultations? You suggested that there would be a dialogue if there was a consultation about a licence fee, but how much regard do you think any Government takes of any particular consultation?

Howard Pridding: Any Government, or the charity and British Waterways?

Q115 Chair: Would it be the charity that would—?

Howard Pridding: On individual licence fees, for the businesses that pay a licence fee to British Waterways, bearing in mind that for many businesses BW are their landlord, there is a consultation process with the stakeholder groups nationally. I would see that continuing under the new charity, and it is the same for the boat licences.

Clive Henderson: Boat licences, yes.

Q116 Chair: We have not discussed, Mr Henderson, the appendix about bridges in your memo to us. Are you concerned about the state of bridges and the required level of spending for them?

Clive Henderson: We are concerned about the historic liability of a group of navigations that were put together under Acts of Parliament 230 years ago, when a bridge was provided for the local lane or track. There is an obligation on British Waterways now, and on the Canal and River Trust in future, that they have to take what might be a blank commitment to maintain these bridges. We know that if local authorities remove an old bridge and replace it with a new one, it becomes the Highway Department’s responsibility, but a lot of the tradition, and part of the heritage, is the hump-backed bridges around the country that are not capable of dealing with any more weight increases on what we currently have. We have concerns that the future direction is that there will be heavier traffic rather than lighter traffic.

Q117 Chair: Any comments, Mr Pridding?

Howard Pridding: Nothing to add, no.

Q118 Chair: Finally, Mr Henderson, you seemed to contradict in your evidence this morning what you put in your Appendix A and the written evidence about the shortfall, or perhaps it was a comment from one of the earlier witnesses. You do say that on dredging that the IWA has already determined elsewhere that, in order to maintain a steady state, approximately £8 million is required to be spent on dredging each year, in addition to the £40 million needed to address the backlog. I think you corrected that to £20 million.

Clive Henderson: The £20 million I was referring to is in paragraph 3, which is effectively the £20 million gap in the ideal Government funding required to maintain the waterways in the steady state. If the backlog of dredging, which has built up over many years, were to be addressed in one go, it would require £40 million to be spent and an ongoing £8 million to cope with the siltation that occurs all the time from run-off of silt from adjoining land. That is when it rains, of course, and as it is not raining, we do not have so much silt coming in—perhaps it is the only good news out of the drought problem. I do not think it would be realistic to expect the £40 million dredging backlog to be made up in any one year or even in a five-year period, because there would probably not be the capacity of dredgers around to do it, and if it were spread across the year, it would probably interfere with navigation activities. It would be on a huge scale.

Q119 Chair: Thank you. On the conditional funding of towpaths—this is your paragraph four of Appendix A—the £10 million extra starting in 2015–16 is conditional on the charity maintaining the principal assets. You are just saying that conditional funding must not be conditional.

Clive Henderson: The spirit of the conditionality is good—that the principal assets in categories D and E are kept below 22%, and that 50% or 60% of the towpaths are in satisfactory condition. It is all very good. But the threat that, if they are not maintained in those conditions, the £10 million additional funding would not be available would only exacerbate the situation. There would then be less money to achieve those objectives.

Q120 Chair: On Mr Gardiner’s point, or whoever it was who raised the question about volunteers—I think two of us did, Mr Parish and I—the figures that you have given in Appendix A you say were regarded as “optimistic” by the all-party group, and that the economy continues to be fragile. They were the figures of £5.5 million to £6 million by year 10, and recovery of net property income to £85 million by 2014–15. Are you still saying that is optimistic? Do you share the all-party group’s views on voluntary giving?

Clive Henderson: Paragraph five?

Chair: Yes, and six.

Clive Henderson: We were just saying that they were regarded as optimistic by the all-party group. Those are your colleagues that sit—

Q121 Chair: For the record, do you think they are achievable?

Clive Henderson: The voluntary giving I still think has to be seen to be delivered. I am not an expert. Although I am the Chairman of a national charity, we do not see any sums of that magnitude being given to us in any one year, and we have been effectively asking along the same lines for some time. I hope the new charity is successful in raising that new money, because it is envisaged that it will come from a new group of supporters but there rather than some of the traditional ones. On the net property income, the market conditions on property and development in the economy will hopefully improve one day. The assumption is that it will improve by 2014–15 in those assumptions. I do not know.
Q122 Chair: Let us all be optimistic.
Clive Henderson: Yes.
Chair: Thank you very much indeed for participating. Mr Henderson and Mr Pridding. It has been enormously helpful. We obviously are up against a deadline. There are some further questions that have arisen that we would like to put to Defra. It will enable us to meet the deadline only if we receive this in writing very promptly. That is just for the record. Can I thank all our witnesses for having participated this morning? We are immensely grateful.
Written evidence submitted by the British Waterways and Canal & River Trust

1. Overview

1.1 The British Waterways Board (BW) enthusiastically supports the proposal to transfer its assets, powers and responsibilities in England and Wales to a new charity, the Canal & River Trust (CRT) and we are delighted to be at the point of realising a long held dream. BW first proposed this move in 2008 at a launch in the House of Commons backed by Labour, Conservative and Liberal Democrat representatives. The idea has evolved and been refined through detailed discussion and consultation with a wide range of interested parties. It has been backed by all the main stakeholder organisations and by both the current and previous Government.

1.2 The details of the transfer have been thoroughly researched, considered and negotiated by BW officials (acting for the CRT trustees) and Defra officials together with their respective advisers in a constructive and open manner, albeit with sometimes robust challenge by one party or the other in advancing their respective interests. We believe the suite of arrangements that has emerged will provide a balanced and pragmatic framework for CRT to operate within.

1.3 The Order ensures that CRT has the freedom to operate to maximise the advantage of its new status whilst establishing effective and proportionate safeguards to protect the public interest.

1.4 We passionately believe that CRT will provide a better and more secure future for BW’s canals and rivers. The goodwill, enthusiasm, innovation and energy of the general public will be fully harnessed to ensure that the waterways of England and Wales thrive and maximise the public benefit they can deliver.

1.5 Our only concern is one of timing. We wish to launch CRT at a time when it will maximise its impact and start our fundraising campaign with a bang. To do this we must launch in the summer but avoid the Queen’s Jubilee and the Olympics. There is only a small window of opportunity to do this in late June. Should Parliament be minded to approve the Transfer Order, we hope that the Parliamentary process can be completed in time to meet this narrow window of opportunity. If this is not achieved then potentially many thousands of pounds of fundraising may be lost.

2. Key Aspects of the Transfer Order and other Arrangements

2.1 CRT is satisfied that the statutory functions transferred by the Order are fully sufficient to enable it to effectively operate and manage the waterways as successor to BW. This is as a result of a detailed analysis of the complex (and historic) statutory framework within which BW currently operates, carried out by a joint team of BW and Defra lawyers. No new regulatory powers have been created and indeed various powers unnecessary to the charitable role of CRT as successor to BW have been excluded from the Transfer.

2.2 BW will remain in existence as a public body to continue to operate its waterways in Scotland, reporting to the Scottish Government. BW management in Scotland worked closely with the Scottish Government and BW is satisfied that the Transfer Order preserves all of BW’s existing statutory functions for such continued operation in Scotland appropriately adapted to sole oversight by that Government following loss of its cross-border status.

2.3 CRT will in England & Wales hold the transferred waterway infrastructure (including the towpaths) under a Trust Settlement which will provide that, in effect, it is held in Trust “for the nation”. This will mean that:

— it cannot be sold or disposed of without the consent of the Secretary of State;
— the towpaths will always be open and accessible on foot free of charge; and
— the Secretary of State can replace CRT as trustee of the waterways if it fails to meet the requirements of the Trust Settlement.

That protection will extend to derelict and disused waterways with a reasonable prospect of restoration. The improved protection of all the waterways which this provides has long been an ambition of BW.

2.4 BW’s remaining land and property holdings (the property endowment), including its commercial property portfolio, will be transferred without the limitations of a restricted trust but with other arrangements to ensure they are managed for the benefit of the waterways. The freedom to manage these investment assets flexibly and innovatively is key to the long-term financial sustainability for the waterways—a primary objective of the Transfer. BW has an excellent overall record in the management and growth of the property endowment, notwithstanding the constraints of public sector status. Removal of those constraints will improve the opportunities for effective (albeit prudential) investment management.

2.5 Nevertheless the management of these assets needs to continue to be directed towards their primary purpose of providing long-term revenue support to the transferred waterways and CRT accepts that, as a new charity, monitoring by an independent “Protector” is appropriate in the public interest until it is fully financially self-sustainable. The arrangement is considered in more detail in section 4 below. Under the arrangement CRT has effective freedom to manage, but within an agreed framework to ensure the assets are not squandered.
2.6 With the transfer of BW’s statutory functions necessary for the management of the waterways, CRT will become a statutory undertaker and assume all the public responsibilities which that entails in addition to its charitable duties under charity law. Furthermore all property and other assets not part of the Infrastructure Trust will be subject to the protections of charity law in that they will have to be dealt with in accordance with the charitable objects of CRT and the duties of care prescribed by the Trustee Act 2000.

2.7 The 15 year funding agreement between Defra and CRT will guarantee a level of grant to CRT for that period. That certainty of funding, never enjoyed by BW, has been a primary objective for BW/CRT for the Transfer arrangements. With very long-term liabilities, improved certainty in a significant proportion of its revenues will enable longer term and thus more efficient financial planning on the part of CRT.

2.8 The terms of the funding agreement are relatively complex but the key terms of a core grant of £39 million pa (which is inflated over the term) and another £10 million pa of conditional grant (which is not inflated) are set out in Annex B of the Explanatory Document. The conditional grant is dependent on CRT achieving certain public benefit performance targets in respect of infrastructure management, towpath access and flood asset management. These provisions emerged from robust negotiation and CRT considers the outcome tough but fair in the current climate of austerity.

3. THE CHARITABLE OBJECTS

3.1 The proposed charitable objects of CRT are attached at Annex J to the Explanatory Document. They have been subject to extensive public consultation (and adjusted in the light of that) and they will be subject to some minor further refinement as a result the pre-registration dialogue with the Charity Commission.

3.2 Charitable objects set out what a charity seeks to do for public benefit. Some are aspirational and CRT will always have to prioritise its expenditure and activities to optimise the public benefit it can deliver. The statutory obligations CRT is inheriting will set out what CRT has to do.

3.3 The great advantage that the status of CRT as a civil society body will bring is the full engagement of local communities and other stakeholders in that prioritisation of activity and expenditure in pursuit of the charitable objects, albeit subject to the statutory undertaker obligations.

4. THE PROPERTY ENDOWMENT

4.1 This endowment consists of all the land and buildings not forming part of the waterway infrastructure. The investment property element provides a valuable source of income to CRT; provides balance sheet strength, acts as a reserve fund in case of emergency; other elements provide some operating facilities like offices and workshops.

4.2 The income produced from the investment property and assets will generate a significant part of CRT’s revenues and will continue to be managed to provide a long term income stream to CRT. CRT will, in normal circumstances, only spend the annual income derived from these assets (eg rents and premiums) on the waterways. Any capital receipts (eg from sales) will be reinvested in other property or investments for long term growth and revenue. In this way CRT will, just as BW has done, over the longer term only live off its annual property income and continue to grow the capital value of the endowment. There may be exceptional cases where some of the capital is used to deal with a large and unexpected repair cost but in such circumstances there would be a plan to repay the capital over time from the revenue account.

4.3 The proposed Protector arrangement forms part of the funding agreement and until CRT is fully financially self-sustaining (ie no longer in receipt of annual grant from government) CRT’s management of its investment assets will be monitored by the “Protector”. The monitoring will check that the investment assets are managed in accordance with a Statement of Agreed Purposes. This will require there to be no material diminution in the value of the assets (normal market fluctuations excepted) and no material diversion away from the agreed purposes. If the Protector considers that CRT is not managing these assets in compliance with the Statement, the Secretary of State can intervene and if necessary transfer them and the property in the Infrastructure Trust (the transferred waterways) to another Trustee body.

4.4 The Statement of Agreed Purposes will be designed to ensure the endowment is managed and invested for the purposes it was given ie to provide a long term income stream to CRT and not for short/medium term gain by disposal and expenditure of the capital proceeds on maintenance or other charitable activities.

4.5 The Protector role has a good pedigree, having been used elsewhere when a new charity or social enterprise is launched with a substantial endowment, as is the case with CRT. It is adaptable and flexible to particular circumstances and provides credible levels of assurance without constraining innovation. It is being used in the transfer of NESTA from the public to the charitable sector.

4.6 The Protector will be jointly appointed by Defra and CRT (with appointment by an appropriate professional body in default of agreement). The skill set sought will be determined by the nature of the predominant asset investment class of the portfolio from time to time and the initial Protector is likely to have an institutional property investment background. Appointments are likely to be for five year terms.
4.7 If the Protector reports to the Secretary of State that CRT has materially failed to comply with the Statement of Agreed Purposes (and there will be an appropriate escalation process for that) then the Secretary of State will have a choice of proportionate remedies. First the Secretary of State will have the power to withhold some or all of the annual grant payable under the funding agreement. If this remedy is insufficient the Secretary of State will, from entrenched provisions in the constitution of CRT, have special powers to replace the Board of CRT with his or her own appointees (but such special powers will only be available when CRT is in serious and material default).

4.8 If the Secretary of State is of the view that that CRT as an organisation is so broken that it is incapable of being an effective corporate trustee, the Secretary of State will be able to use powers under the Infrastructure Trust Settlement to remove CRT as such corporate Trustee (replacing it with another charitable trustee or trustees) and request the Board of CRT as appointed by the Secretary of State to transfer the investment assets to the new trustee so that they follow the Infrastructure Assets.

5. Checks and Balances

5.1 The key suite of arrangements involved in the transfer does, in the view of CRT, provide an effective and proportionate range of checks and balances as summarised below.

5.2 The Transfer Order—This transfers all of BW’s statutory powers and obligations necessary for the management of the waterways to CRT. CRT will have the same accountability for its statutory duties as BW. The order also makes CRT subject to the Freedom of Information Act in respect of the transferred statutory functions.

5.3 The Transfer Scheme & Trust Settlement—The Scheme transfers the BW waterway network to CRT to be held by it as sole corporate trustee under a Trust Settlement. As set out above it will allow CRT full management control but without the power to sell or dispose any part of it without the Secretary of State consent (and that of the Charity Commission in some circumstances). The Trust Settlement will also require CRT to provide free pedestrian access to the towpaths of its waterways.

5.4 The Funding Agreement—This provides for:
   — the funding Defra will provide to CRT for the first 15 years;
   — certain performance requirements for CRT in respect of asset management, towpath access and flood asset maintenance;
   — the terms of appointment of the Protector; and
   — requirements on CRT to publish information and data on key public interest areas.

5.6 CRT’s constitution—This provides for:
   — the governance arrangements for CRT. It enshrines the Council as the effective “shareholders” of CRT and gives this body of 35–50 representatives from the stakeholder constituency the power to appoint and dismiss trustees;
   — establishes the Trustees as the persons responsible for the proper running of CRT; accountable to the Council and subject to the regulatory oversight of the Charity Commission; and
   — establishes the 13 Waterway Partnerships as local advisory bodies to the trustees and management with real influence on the deployment of resources.

5.6 Memorandum of Understanding—This is a non-binding agreement between Defra and CRT that sets out the background to the transfer, the intentions that lie behind it and provides for continued constructive engagement with government together with some assurances to CRT on the management of the impacts that may arise from reform of water resource regulation and implementation of the Water Framework Directive.

6. The Financial Viability and Sustainability of CRT

6.1 CRT will continue to benefit from all the income sources available to BW with the addition of some new income sources and savings that arise from its charitable status. CRT is therefore in a better financial position than BW particularly with the 15 year funding agreement.

6.2 BW has a sophisticated financial model which looks ahead for the next 15 years. The headline figures from this analysis are set out below.
FINANCIAL SCHEDULES

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<thead>
<tr>
<th></th>
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<tr>
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<td>93</td>
<td>121</td>
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<td>earning activities</td>
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<tr>
<td>Grant</td>
<td>39</td>
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<tr>
<td><strong>Total Income</strong></td>
<td><strong>113.5</strong></td>
<td><strong>150</strong></td>
<td><strong>187</strong></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
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</thead>
<tbody>
<tr>
<td>Management, pension contingency</td>
<td>39</td>
<td>43</td>
<td>52</td>
</tr>
<tr>
<td>Repairs, improvements, maintenance</td>
<td>74.5</td>
<td>107</td>
<td>135</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>113.5</strong></td>
<td><strong>150</strong></td>
<td><strong>187</strong></td>
</tr>
</tbody>
</table>

6.3 We consider CRT is viable because:

- The funds available for maintenance, improvement and repair are sufficient to keep the waterways in much the same condition as they currently are. The freeze in government funding for the first three years causes the condition of the waterways to reduce slightly, but operational functionality will not be affected.

- CRT will have three relatively secure income streams from property, utilities, boating and more secure funding from government than BW currently receives. In the current difficult economic climate all the earned income streams have held up with no significant reduction. The income stream that has reduced is government grant and this is now secured for the next 15 years.

- The charitable income is modest compared to existing income but makes a worthwhile contribution over the longer term. We would hope to improve on this forecast as our experience in civil society grows.

- We have agreed an affordable funding regime for the BW pension scheme which has satisfied the pension fund trustees that CRT will be able to meet all its obligations to the pension fund.

6.4 At the end of the 15 year funding agreement it is probable that CRT will continue to require some government funding for a while longer. The amount of funding will depend on how successful CRT has been in growing and developing its income as a charity. The funding agreement requires CRT and the government to review the funding need in 2022 so that CRT has five years notice of the new funding arrangements from the expiry of the current contract.

7. New Ways of Working

7.1 For most staff in BW there will be little or no change to their day to day job when they are transferred under TUPE to CRT. However there will be some fundamental strategic differences in how we approach our work and engage with supporters and communities on a national and local level.

7.2 One fundamental change is in the governance arrangements with the introduction of a representative Council and 13 Partnership Boards at a regional level. Through this governance and advisory structure CRT will now engage with supporters and communities more widely, more often and at a more local level than ever before. We regard this as a very positive move which will enable CRT to benefit from the enthusiasm, skill, endeavour and experience of enthusiasts, neighbours and supporters across the country.

7.3 The formal structure of CRT’s Council will give a voice to all the different stakeholders who use and enjoy the waterways. It will also provide a mechanism for those closest to the waterways to be elected onto Council to give it a “grass roots” representation. The Trustees have committed themselves to eventually having 50% of Council members elected.

7.4 It will also help to continue the growth in volunteers on the waterways. BW staff have welcomed over 25,000 volunteer days onto the network in the past year and the increased engagement and involvement resulting from our new status is bound to increase this figure substantially over the next few years.

7.4 The other fundamental change to the way we work is that everyone who we come into contact with is a potential donor of their time, experience, skill, knowledge and money. This will encourage everyone within CRT to welcome engagement and involvement in the hope that we can turn an initial conversation into a longer term relationship of mutual advantage.

March 2012
Supplementary written evidence submitted by British Waterways

Thank you for the opportunity to give evidence to the Select Committee on Tuesday last week. I have seen a copy of your letter of 14 March to Richard Benyon, and the Minister has asked me to respond to your request for the funding model. (I understand that he will respond to you directly on the other points in your letter). I would also like to take the opportunity to explain in greater detail how we are handling the challenge of the pension deficit.

Funding Model

I attach a schedule of income and expenditure for the years 2011–12 to 2026–27. This covers this financial year and the 15 years of the funding agreement. These are the figures within our funding model and were the ones used in our discussions with Defra. I would also point out some specific property matters that influence the income especially in the early years.

In 2011–12 our net income from the Property business area is now forecast to be £24 million. Over the 15 year period to 2026–27 (covered by the plan) this grows by 95% to £47 million p.a. Growth of 46% (£11 million p.a.) occurs in the first five years of the plan to 2016–17, with market generic assumptions adopted thereafter.

This early growth is underpinned by five key facts illustrated graphically by the table below:

1. Rental derived from the Wood Wharf (a large development site in docklands) transaction is now contracted and will increase to £6 million p.a. in stages by 2016 (dark blue below).
2. The contracted return of £48 million of equity from the Wood Wharf partnership will enable an orderly reinvestment into new property which will generate £3.2 million p.a. of additional property income by 2016–17 based on broad commercial property market rates of return (red below).
3. During 2011–12 BW has invested £35 million in new property investments using cash capital reserves. These investments will generate £2.5 million of additional income by 2016–17 (green in table below). Cash reserves had been kept historically high to manage liquidity risk during the recent property downturn but can now return to normal levels.
4. In addition BW will continue to generate cash inflows for reinvestment in new property. These come from already contracted sales with deferred payment terms, asset churn/recycling and other JV equity repayments. Income from these new investments is expected to reach £2.9 million p.a. by 2016–17 based on broad commercial property market rates of return (purple in table below).
5. Meanwhile, the underlying rental growth assumptions for the portfolio have been taken from consensus forecasts and assume little or no near-term rental growth, other than from contracted arrangements to which we attach a reasonable level of certainty and whilst the weak economic recovery gradually picks up pace. This amounts to £1.1 million per annum by 2016–17. Beyond the medium term we have assumed the portfolio starts to deliver inflationary increases at around 3% p.a., ie the purchasing power of rental income keeps pace with cost inflation. Again this fits with consensus forecasts at this point in time. In respect of income from JV’s our modelling includes assumptions based on known, albeit not certain, opportunities up to 2018–19 but thereafter, income is speculatively modelled on the assumption of a realistic market annual return on capital invested (light blue in table below).
Funding the Pension Deficit

At the hearing you correctly stated that the pension deficit was £65 million at the 2010 valuation. While we have been developing proposals for CRT, the international economic problems have continued, as I mentioned in my evidence, to have a favourable impact on the value of UK gilts with the consequence that gilt yields—against which pension liabilities are benchmarked—have fallen considerably since March 2010. Because of this, the pension deficit is likely roughly to double when the fund is re-valorated on implementation of the proposed Pension Fund Partnership.

The Committee asked for reassurance about how we are seeking to manage the BW Pension Fund deficit. I am confident that we have an approach that is sustainable within CRT’s future business model and will enable CRT to pay off the deficit within our long-term financial plan. It may, however, be helpful if I explain in greater detail the arrangements we have agreed in principle with the BW Pension Fund Trustees.

In June 2011, the British Waterways Board took decisive action to put the pension fund on a sustainable footing: we closed the scheme to new members on 1 April 2011; from 1 April 2011, we moved all current employees in the scheme onto benefits defined by career average earnings (the scheme had previously offered pensions defined by final salary); and in line with the Government’s proposals we adjusted retrospectively all accrued pension benefits to CPI indexation in place of RPI indexation. This all significantly reduced the cost and risk of the pension fund to BW.

Once the assets and liabilities of the waterways in England and Wales are transferred to the Canal & River Trust (CRT), the CRT will become the “principal employer” in the pension fund. Because CRT will be a charity, this move has consequences for the pension fund. In particular the pension fund trustees’ view is that the move out of the public sector will weaken the “employer covenant”, causing them to seek more challenging deficit repayments. This is because the pension fund trustees considered that BWB, as a public corporation, has a de facto (though not de jure) Government guarantee of its debts; once the CRT becomes the principal employer in the fund, this would disappear.

In order to manage this risk, we have been working for some months on a means of offering security to the Pension Fund Trustees. The chosen vehicle for offering the security is called a “Pension Fund Partnership”: an investment instrument commonly used for pensions in the private and charitable sectors. Under it, CRT will place some of its £460 million property assets in an investment partnership, which will be used to generate income for the pension fund and asset backing for the deficit. The assets themselves will be held in the investment partnership effectively as security in the event that CRT were unable to pay back the deficit at the end of the redemption period.

It is within this context that we requested additional help from Defra during the recent funding negotiations. As you know, Defra has granted us £25 million in 2011–12 to help us manage the increased deficit and has also offered a pension indemnity for the historical, public-sector pension liabilities—up to a maximum of £125 million during the 19 remaining years of the deficit repayment plan. This is a “last resort” measure, meaning that the Government would pay out only if CRT’s total commercial assets were unable to complete deficit repayments in full. Since the commercial assets far exceed total pension liabilities, and we are capable of meeting our annual deficit repayments under the Pension Fund Partnership, I am confident that this situation will not arise. Indeed, the impact of the two measures offered by the Government has enabled us to convince
the Pension Fund Trustees that the employer covenant is unimpaired, and to secure annual repayment terms that are affordable. We estimate that annual cash flow payment in respect of the pension fund deficit going forward will be £7 million p.a. As I mentioned in my evidence, we have made provision for this in our business plan projections. These payments are contained within the expenditure line marked “pension deficit” in the enclosed financial schedule.

Despite the uncertainties which we are managing, I am confident that the steps we have taken will ensure the sustainability of the pension fund into the future, while also not impacting on CRT’s overall financial viability in the charitable sector. I hope that this reassures you and the committee, and I am happy to answer any further questions you may have.

March 2012
### CANAL & RIVER TRUST PROJECTIONS—FINAL AGREEMENT

#### Profit and Loss

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<thead>
<tr>
<th>Year</th>
<th>Commercial Income</th>
<th>Leisure</th>
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<th>Marinas Limited Ventures</th>
<th>Civil Society Benefits</th>
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#### Funds for Public Benefit Delivery

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<th>Year</th>
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<th>Major Works</th>
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#### Surplus/(Deficit)

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<th>Surplus/(Deficit)</th>
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<tr>
<td>2011–12</td>
<td>(3,000)</td>
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<td>2012–13</td>
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Printed: 15/03/2012 09:37
Written evidence submitted by the British Marine Federation

The British Marine Federation (BMF) welcomes the opportunity to submit evidence to the inquiry of the House of Commons Environment, Food and Rural Affairs Select Committee into the British Waterways Board (Transfer of Functions) Order 2012 and the Inland Waterways Advisory Council (Abolition) Order 2012. These responses broadly reflect the on-going view of the BMF and its members.

1. INTRODUCTION

1.1 The BMF is the Trade Association for the UK recreational, superyacht and small commercial marine industry, representing approximately 1,500 member companies. Our industry is comprised of small and medium sized enterprises, with over 98% of our companies employing less than 50 people.

1.2 Approximately 40% of BMF members operate businesses on the inland waterways of our country. These waterside companies and those who earn their livelihoods from them are wholly dependent on the navigation authorities (and therefore the Canal & River Trust when it comes into existence) to maintain the waterways to sustain boating activity.

1.3 The BMF supports the transition of British Waterways (BW) from a public corporation to a charity, as the best possible route to maintaining the navigability and attractiveness of our waterways for the foreseeable future. We agree that the ability to leverage additional commercial revenue and better engage with a broader range of stakeholders will be facilitated by the charitable trust.

1.4 In our response to the Government’s consultation A New Era for the Waterways, we set out the three key areas, which our inland members had agreed upon, which need to be met for the new Trust to be successful:
— Maintain navigation as the charity’s primary function.
— Ensure that the levels of service are appropriate for all users of the waterways.
— Secure proportionate industry representation within the governance of the charity.

1.5 The creation of the Canal & River Trust is the culmination of three years’ hard work and extensive scrutiny. It is our belief that it has the support of the majority of stakeholders as the best way forward in establishing a sustainable future for our waterways.

The BMF has the following comments to make about the Transfer:

2. FUNDING FOR THE CANAL & RIVER TRUST AND PENSION PROVISION

2.1 The BMF welcomed Government’s revised funding agreement for the Canal & River Trust (announced 31 January 2012). We believe the improved settlement gives the Trust a much better chance of establishing itself in its formative years. The settlement also directly addressed one of our major concerns, the pension deficit. We are grateful to Government for including a capped “last resort” guarantee in relation to the historic public sector pension liability.

2.2 The BMF is grateful to Government for providing additional funding to ensure the Trust has resources available to carry out certain key functions:
— Maintaining satisfactory condition of principal assets.
— Maintaining satisfactory condition of towpaths.
— Ensuring satisfactory flood risk management measures.

3. SAFEGUARDING OF SERVICES

3.1 Maintenance of the waterways is vital to the viability of the boating industry. It is essential there is a national “standard” for all Trust waterways which do not fall below existing levels. This must include adequate canal depths for navigation, regular vegetation management and ensuring overall network connectivity.

3.2 The “statutory proposer” role for the Canal & River Trust, along with the existing requirements for the Government to consult on any proposed changes to classification, provides the waterways and its users with the appropriate protection measures.

3.3 The BMF is grateful that the measures also ensure that the Trust must produce a comprehensive cost benefit analysis should it propose any changes to classification of a waterway.

3.4 The BMF also supports the creation of Waterways Partnerships, which we believe will ensure the use of local knowledge when considering the needs of canals and rivers. The BMF is working to facilitate business involvement in Waterways Partnerships.

4. SAFEGUARDING OF THE ENVIRONMENT

4.1 Safeguarding the natural environment is of prime importance to those who operate waterside businesses and their customers who enjoy boating on the canal network and navigable rivers. The BMF believes that the
powers transferred from BW to the Trust, and the agreements given in the Trust Settlement, ensure the conservation, protection and improvement of the natural environment and landscape of the Inland Waterways.

4.2 As mentioned already, the BMF welcomes the additional funding from Government which is linked to requirements around the maintenance of principal assets, towpaths and flood risk management. By linking the funding to these measures, we believe the Trust has adequate incentive to safeguard the environment.

5. Safeguarding of Assets

5.1 The BMF believes that the agreements undertaken between Government and the Canal & River Trust, alongside the regulations put down by the Charities Act 1993 and as amended in the Charities Act 2006, provide adequate protection of the assets being transferred from BW to the Trust.

5.2 The inclusion of a requirement to obtain Government’s consent for the disposing of any part of the Infrastructure Property is welcomed.

6. The Abolition of the Inland Waterways Advisory Council (IWAC) and other Points of Interest

6.1 The BMF did not oppose the Government’s decision to abolish IWAC. However, we believed that the Trust should take the opportunity to use the experience and knowledge of IWAC’s membership, and incorporate them into the Expert Advisory Groups.

6.2 The BMF supports the Government’s decision to require the Canal & River Trust to comply with the Freedom of Information Act, but only with regard to information relating to its exercise of functions of a public nature. Given that the Trust will be in receipt of public money via Grant-In-Aid, it is appropriate that it be treated in a similar way to other publicly funded organisations.

6.3 However, as Grant-In-Aid is set to end in 2026–27, we believe it is only appropriate that any requirement to comply with the Freedom of Information Act run until that time. The BMF therefore suggested in its response to the Government’s supplementary consultation the inclusion of a sunset clause.

March 2012

Written evidence submitted by The Inland Waterways Association

1. The Inland Waterways Association is a national charity set up in 1946 to effect the protection of the canal network from government closure. Over the years we’ve campaigned for the use, preservation, restoration and development of the inland waterways and have been instrumental in saving over 500 miles of canals and inland waterways saved from disuse, and a further 500 miles subject to active restoration schemes today. The attitude of government both national and local has also been influenced from redundant freight transport routes and a “fill ’em in” attitude, to one of recognition of the wide benefits to the public in terms of amenity and leisure that well maintained waterways can provide. Waterways now contribute more than £3 billion to UK Plc. (British Marine Federation).

From the outset of our formation we have envisaged a national, independent organisation vested with the husbandry of the inland waterways and therefore we welcome wholeheartedly the proposals to initiate the formation of the Canal and River Trust as the first steps in achieving a national charity for all of the country’s inland waterways.

Canal & River Trust Financial Viability

2. IWA welcomes the outcome of the Canal & River Trust Trustees negotiations with government over the government contract. A much improved financial position for the charity. We congratulate the Trustees on their negotiating skills and government on being willing to listen to the arguments for improved funding.

3. Nevertheless it’s still a difficult start for the charity—£39 million each year until 2014–15 when British Waterways estimated they needed more, means that they are operating with a funding deficit of over £20 million less than that which is ideal(Appendix A). The company has said that this deficit has caused them to operate the system at a reduced maintenance level that has resulted in inadequate dredging and caused a decline in the waterways as means of navigation.

4. The additional £10 million per annum that begins in 2015–16 and thereafter are welcomed by IWA, but it is conditional on Trust performance in ensuring:

- Satisfactory condition of principal assets.
- Satisfactory condition of towpaths.
- Satisfactory flood risk management measures.

IWA believes that the Trust would only breach these tests due to an inability to finance better performance.
IWA believes that the additional £10 million and the increased funding contract of 15 years plus the property endowment now make the charity a viable proposition.

IWA would be concerned as to the actual implications for the Trust if it does underperform on any of the three measures since any reduction in funding arising from not meeting them would only make matters worse for one or all of these measures in subsequent years.

**The Transfer Order**

5. The Transfer Order that will transfer the British Waterways statutory functions to the Canal and River Trust will give the Trust the right to ask the minister to both upgrade and downgrade the status of waterways. Richard Benyon commented to the All Party hearing in December that the Government wanted to see the existing network “maintained and enhanced”—“closures would not be constructive”. But there remains a stakeholder concern that financial difficulty might cause the Trust to request that the minister downgrade cruiseway waterways to remainder status—effectively abandoned.

IWA welcomes the objects of the Trust now redrafted, to clearly state the maintenance of navigation as a primary objective.

IWA also welcomes the additional safeguards provided under the new Deed of Trust arrangements where by CRT won’t be able to dispose of any waterways as BW may have done in the past.

**The Commercial Waterways**

6. The Defra consultation suggested that arrangements should be put in place to downgrade underused and unaffordable commercial waterways. The broad consensus from respondents was broadly to agree with this proposal and Defra has announced that legislation will place obligations on the Secretary of State to consider charity representations on affordability.

7. IWA suggested that that a stakeholder group should be set up to review the commercial waterways and to report to both the Secretary of State and the charity.

We have been given assurances from the Transition Trustees that CRT will facilitate an Advisory Group on freight and that IWA and other key stakeholders will be involved.

**Canal & River Trust Governance**

8. Defra has placed primary responsibility for governance with the Trust. It has said that the Transition Trustees have decided that the charity would not have a membership for fundraising purposes. On the basis of their experience and the market research that British Waterways had done, they came to the view that other means of fund raising and stimulating voluntary giving were more effective than a formal membership.

9. Within the governance arrangements for CRT, the Council fulfils the role as representative forum with 35–50 representatives from the stakeholder constituency. They are granted power to appoint and dismiss trustees. However, only some of the council are elected, the rest are direct appointments. IWA would like to see more direct elected positions on council.

We are pleased that CRT is striving to be as inclusive as possible, representing a broad stakeholder constituency and to have committed to 50% directly elected members to council in the next few years.

10. Thirteen Waterway Partnerships are to be formed to act as local advisory bodies to the trustees and management and will shape and implement the deployment of resources regionally.

IWA believes that the stated desire to create and engage user representation within these partnerships at sub board level, possibly through focus and user groups will ensure that the wishes of users are fully understood and taken into consideration in shaping plans and proposals for the future.

**The Environment Agency Navigations**

11. Richard Benyon is on the public record as saying that the Government is committed to the transfer of the Environment Agency navigations to the Canal & River Trust, subject to affordability and the agreement of the charity Trustees.

12. British Waterways has about 49% of the navigable inland waterways. The Environment Agency has about another 20%. Without the Environment Agency navigations the transfer of the British Waterways network to the charity can be viewed as phase 1 of a bigger project to deliver what should eventually be a genuinely national charity for the inland waterways.

13. There are a range of benefits that can be delivered by the transfer of the Environment Agency navigations. These include:
   — A stronger focus on the core mission of these waterways in the best interests of the community, with improved scope for a genuinely new body through cross fertilisation.
   — A simplification of the management of the waterways to the benefit of business and the public.
— An improved ability to gauge and respond quickly to changing customer needs.
— Better value through the economies of scale to be achieved through the creation of a single organisation, and a co-ordinated system with, for example, a single navigation licence.
— More scope for the development over time of a national identity, like the National Trust, The National Parks, and the national museums; increasing usage, volunteering and charitable donations.

IWA hopes that the review will seek to ensure that everything is on track for a transfer of the Environment Agency navigations to the Trust in 2015, including confirmation that plans are in place to ensure that funding is not an obstacle, and that there are no other issues that might impede the transfer.

LEGAL UNDERTAKINGS AND COMMERCIAL AGREEMENTS TO THIRD PARTIES

14. There are many legal undertakings BW has made over the years to third parties including IWA and BMF as well as commercial agreements affecting the smooth running and profitability of BW undertakings. The Transfer Scheme is supposed to cover these issues.

We have been assured by BW that all such existing undertakings and contracts will be transferred automatically within the Transfer Scheme documentation.

CONCLUSIONS

IWA is positive about the opportunities presented by this once in a generation change for the inland waterways of this country.

We unequivocally support the formation of the CRT as a first step towards a national charity running all of the nation’s inland waterways for the public benefit.

APPENDIX A

BACKGROUND & CONTEXT TO FUNDING ISSUES

1. The negotiations that the Canal & River Trust Transition Trustees had with Government over public finance for the charity have led to a much improved deal for the charity. The initial proposal from government was £39 million per annum over 10 years, without indexation, plus the British Waterways non-operational property portfolio. Broad brush, the deal had been £390 million over 10 years with the property. Now it is some £800 million over 15 years. The key components are:
   — Starting in 2015–16 there is an extra £10 million per year conditional grant, (capped in the last five years); and a further one off repayment of national loans of £6.2 million payable immediately.
   — There is now indexation on the core grant.
   — The contract term has been increased from 10 to 15 years providing increased financial security.
   — Additional resources to address the past service pension liabilities. This has been addressed in part with a government guarantee of last resort for 19 years and a one-off payment of an additional £25 million grant for this year.

2. Despite the improved financial outlook there are remain issues worth exploring. At the British Waterways AGM last year it was revealed that an earlier KPMG estimate of a £30 million funding gap for the company (the difference between what it spends on the waterways annually and what it should spend to keep them in permanent good order) had been reviewed. Efficiencies and additional monies raised had reduced the funding gap to some £20 million. This gap is with grant of £41.5 million in 2011–12. The company admitted that focussing available finance on keeping the network structural foundations secure meant that dredging had been inadequate and that, as a navigation, the waterways were deteriorating. Since funding is only £39 million for the first three years, and there will be early set up costs, early on it looks as if the network will continue to deteriorate.

3. Furthermore, Parliamentary Questions tabled have elicited the following information about liabilities that the Charity will not be able to address in the early years:

   **Bridges:** Key material to emerge was that British Waterways estimates that to keep its bridges in England and Wales at “steady state” (ie to prevent further deterioration) would cost £3.3 million per annum. In 2010–11 British Waterways spent £1.15 million on major repairs and an additional £205k on routine maintenance. Some way short of what it should be spending if it had the money, and far below what is required to bring them into a well maintained condition.

   **BW Pensions:** In March 2010, the British Waterways pension deficit was £65.6 million. The £25 million in year 1 will help but a deficit remains.
Dredging: Around 287km of the network requires dredging and the cost of that would be about £40 million. In 2011–12, British Waterways plans to dredge 45km at a cost of £4.2 million. IWA has already determined elsewhere that in order to maintain a “steady state” approximately £8 million is required to be spent on dredging each year in addition to the £40 million needed to address the backlog. Current expenditure is therefore thought to be half that needed to maintain the network from further deterioration, and will not be capable of remedying any of the current backlog.

Conditional Funding

4. The £10 million extra per annum starting in 2015–16 is conditional on the charity maintaining the principal assets [key infrastructure] and towpaths in satisfactory condition and satisfactory flood risk measures. However, removal or reduction in that conditional funding could simply make the situation worse.

Voluntary Giving and Property Income

5. When British Waterways and their consultants gave a presentation to the All Party Group last year on charity financing, the projections included:
   - Achieving voluntary giving of £5.5–6 million by year 10.

6. These were regarded as optimistic by the All Party Group and the economy continues to be fragile.

BRITISH WATERWAYS/CANAL & RIVER TRUST GRANT TREND

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* although grant in 2012–13 is presented as £70.20 million the Canal & River Trust discretionary spend is £39 million as for 2013–14 and 2014–15. £25 million is for pension deficit and £6.2 million is National Loan Fund Repayment.

March 2012

Written evidence submitted by Anand Patil

I am writing to you to express my concerns about the Draft Statutory Instrument, the British Waterways Board (Transfer of Functions) Order 2012.

I am a narrowboat resident in Oxford without a home mooring (a continuous cruiser). Every two weeks or so, I move my boat to a new location on the Oxford Canal or the River Thames, occasionally venturing as far downstream as Wallingford or as far upstream as Eynsham and Shipton on Cherwell.

Until September, I was a postdoctoral researcher at Oxford University. At that date, having accumulated more than 25 peer-reviewed scientific publications, I left to found a software start-up in the area of business data analytics and intelligence.

I choose the boating lifestyle because I love the water and the freedom to change my surroundings, and because it allows me the complete financial self-sufficiency that comes from owning my home outright. I am
always orderly, considerate of my neighbours on land, and protective of the environment, regularly walking miles with heavy loads to empty my toilet or recycling in the proper way. I enjoy friendly chats and hellos with joggers and walkers. Societal advantages of the boating life have been pointed out by Housing Minister Grant Shapps: http://www.bbc.co.uk/news/uk-14690157.

The vast majority of boaters, and continuous cruisers in particular, are self-sufficient, creative, colourful, considerate people. Always ready to help each other, we are a little Big Society. I know of very few who are any kind of burden on the larger society. However, we increasingly face harassment in the Oxford area at the hands of councillors and others who see us as a public nuisance.

You can read my correspondence with these individuals (who have recently begun to call themselves UMBEG) this summer at:

https://docs.google.com/open?id=0Bx-zvYbH0TC6N2pYUWJpRlRaNzVWV0JUeEp4VkJLZh

This exchange makes clear their distaste for boaters in general, their willingness to radically overstate their legal ability to take action against us, and their complete disregard for our right to our homes under both standard human compassion and Article 8 of the European human rights convention.

The transfer of British Waterways to either charity status or to a private company will remove the minimal protection we have for our homes that derives from British Waterways status as a public body, namely the Human Rights Act, the Equality Act, in part the Freedom of Information Act, and the Government’s Code of Practice on Consultations.

The vast majority of the boating community are upstanding members of society by any objective standard. We are exactly the kind of community the government should be trying to encourage. Please ensure that our homes are given full statutory protection before the transfer.

March 2012

Written evidence submitted by National Bargee Travellers Association

EXECUTIVE SUMMARY

The transfer under the Public Bodies Act of the functions of British Waterways (BW) to a charity will mean that a charity will exercise statutory enforcement powers including the power to seize and destroy boats that are people’s homes without payment of compensation. Enforcement powers of this nature will therefore be exercised by a body that will no longer be subject to any public scrutiny and thus will be unaccountable.

This will reduce the already minimal rights and avenues for redress available to boat dwellers and will put thousands of people at increased risk of homelessness. Boat dwellers have no legal protection for their homes and most moorings have no security of tenure.

BW carries out routine and systematic harassment, threats of homelessness and actual evictions directed against the adults and children who live on boats on its canals and rivers.

This harassment is sanctioned by the Directors of BW but has no sound basis in law. If the landlord of a house treated their tenants in the same way they would be convicted of a criminal offence.

This raises issues of Human Rights, specifically the violation of Articles 6, 8, and 14; Protocol 1 Article 1; Protocol 2 Article 1 and Protocol 3 Article 1 of the European Convention on Human Rights.

The issue of British Waterways was not discussed at all in the Commons Committee stage of the Public Bodies Act despite evidence submitted by boat dwellers. The extremely serious issues raised by boat dwellers were not considered before the Act became law. This grievous omission needs to be rectified before the draft Order is approved.

No Equality Impact Assessment of the transfer of the functions of British Waterways to a charity has been carried out. This is illegal.

The National Bargee Travellers Association (NBTA) therefore believes that the draft Order to transfer the functions of BW should be abandoned unless and until specific measures are put in place protecting boat dwellers from harassment, unlawful eviction and homelessness.

NBTA is a volunteer organisation formed in 2009 that campaigns and provides advice for itinerant boat dwellers on Britain’s inland and coastal waterways. This includes anyone whose home is a boat and who does not have a permanent mooring for their boat with planning permission for residential use. Security of tenure for those with residential moorings is also a matter of concern.

1. INTRODUCTION

1.1 The NBTA believes that the draft Order to transfer the functions of British Waterways (BW) gives rise to some very serious issues of public policy and is therefore likely to be of interest to both Houses of Parliament.
1.2 NBTA believes that British Waterways (BW) should not be transferred to charity status because of the routine and systematic harassment, threats of homelessness and actual evictions BW directs at the adults and children who live on boats on its canals and rivers, noting that the management of the Canal and River Trust will be carried out by the same members of staff using the same policies as BW.

1.3 This harassment is sanctioned by the Directors of BW but has no sound basis in law. If the landlord of a house treated their tenants in the same way they would be convicted of a criminal offence.

1.4 NBTA and a number of other individual boaters and boaters’ representative groups submitted written evidence to the Public Bill Committee in 2011 regarding the provisions to transfer British Waterways to a charity in the Public Bodies Bill. However the matter of British Waterways was not discussed at all in the Public Bill Committee and the inclusion of British Waterways in Schedule 5 of the Public Bodies Act was achieved without any examination of the extremely serious issues regarding the risk of homelessness and loss of rights that the NBTA and other boat dwellers raised in their evidence. It is therefore vitally important that this evidence is considered by the Environment, Food and Rural Affairs Select Committee now.

1.5 The issue of British Waterways was not discussed at all in the Commons Committee stage of the Public Bodies Act. Therefore the extremely serious issues raised and submitted to the Committee by boat dwellers regarding the risk of homelessness and the violation of their Article 8 rights resulting from the transfer were not considered before the Act became law. This very serious omission needs to be rectified by the Environment, Food and Rural Affairs Select Committee.

1.6 The House of Lords Delegated Powers and Regulatory Reform Committee expressed concern in 2011 about the appropriateness of transferring the existing powers of British Waterways to make subordinate legislation; powers of forcible entry, search or seizure; powers to compel the giving of evidence and powers whose exercise will necessarily affect the liberty of an individual, to an unaccountable private sector body that does not otherwise exercise any public functions. The Delegated Powers and Regulatory Reform Committee raised concerns that the transfer of British Waterways would not strike a fair balance between the public interest and the interests of those persons adversely affected by it, and would remove the protections available to persons adversely affected by it.

1.7 The transfer of British Waterways out of public ownership will present a significant additional risk to the already minimal protective rights that boat dwellers enjoy. This, we believe, is material in the passage of the draft Order through Parliament and presents a significant compliance concern.

1.8 No Equality Impact Assessment of the transfer of the functions of British Waterways to a charity has been carried out. This is illegal. No independent assessment exists of the risks the transfer poses to the rights of boat dwellers under Articles 6, 7, 8, and 14 and Protocols 1, 2 and 3 of the European Convention on Human Rights. The Government has failed to assess the impact of the transfer on groups that are protected by the Equality Act. Itinerant boat dwellers are a minority group within the terms of the Equality Act.

1.9 Boat dwellers have no legal recognition or protection for their homes. The transfer of British Waterways out of public ownership will remove the minimal protection boat dwellers have for their homes that derives from British Waterways status as a public body under the Human Rights Act, the Equality Act, the Freedom of Information Act, and the Government’s Code of Practice on Consultations. The legal remedy of Judicial Review will no longer be available to boat dwellers to challenge maladministration or ultra vires action by the Canal and River Trust.

1.10 These provisions are the only protection boat dwellers have from homelessness because there is no legal recognition of the homes of boat dwellers and no protection from harassment and illegal eviction, in contrast to the protection enjoyed by the tenants of houses who are protected from such abuses.

1.11 The protection boat dwellers have for their homes, private and family life and correspondence under Article 8 of the European Convention on Human Rights will be reduced because although Article 8 still applies to them as individuals, the Canal and River Trust will no longer be bound by it as an organisation, so it will be harder for boat dwellers to exercise their Article 8 rights. The same applies to their rights to due process and protection against arbitrary, undefined sanctions under Articles 6 and 7, in other words the Canal and River Trust would have greater powers to terminate their boat licences and seize their boats without going through a Court.

1.12 Other rights that boat dwellers enjoy under the European Convention on Human Rights will be reduced, such as the right to peaceful enjoyment of their possessions—including their homes—under Protocol 1 Article 1; their children’s right to education under Protocol 2 Article 1, and their right to vote in elections by declaring a local connection under Protocol 3 Article 1.

1.13 The Public Sector Equality Duty will no longer apply, therefore the Canal and River Trust will no longer be obliged to carry out equality impact assessments on its policies such as local mooring strategies, which are targeted at and have a disproportionate adverse impact on people who live on boats without permanent moorings. Currently BW can be challenged by Judicial Review if it adopts a policy that has been shown to have a disproportionate adverse impact on a particular group following an equality impact assessment, but this remedy against policies that adversely affect boat dwellers by the Canal and River Trust will not exist.
1.14 The Freedom of Information Act will no longer be wholly applicable, meaning that the Canal and River Trust will be able to bring in draconian new mooring restrictions or unaffordable increases in licence or mooring fees without any form of scrutiny. Currently boat dwellers have been able to challenge and reduce the impact of such restrictions following research using the Freedom of Information Act.

1.15 In the case of Moore v British Waterways Board [2012] EWHC 182 (Ch) the presiding judge expressed considerable concern over the conduct of British Waterways in terms of exceeding its powers under the 1995 Act. The judgement notes that British Waterways is exceeding its powers and appears to be out of control. The presiding judge also observed that BW has systematically violated human rights in the design and operation of its procedures.

2. The Homelessness Consequences of the Transfer of British Waterways Out of Public Ownership

2.1 Currently BW has the power to promote Private Acts of Parliament, Byelaws and Transport and Works Act Orders (which are Statutory Instruments). The Public Bodies Act gives the Canal and River Trust a general power to make subordinate legislation. The procedure for passing Statutory Instruments requires very little Parliamentary or public scrutiny compared to Private Bills and Byelaws. We do not consider that the provisions in the Public Bodies Act relating to the use of Statutory Instruments will provide sufficient protection for boat dwellers against the violation of their Convention rights.

2.2 Byelaws have to be consulted on and interested parties can petition against Private Bills and give evidence direct to the Parliamentary Select Committee which considers the Bill. In contrast the only way to challenge a Statutory Instrument, whether a Transport and Works Act Order or otherwise, is to bring a judicial review. This is a difficult process and beyond the reach of most boat dwellers.

2.3 We already have evidence that BW sought to increase its enforcement powers as part of the Public Bodies Bill. This was discussed under item 11/003 in the BW Board meeting on 27 January 2011; the BW Legal Director Nigel Johnson proposed that BW should obtain extra enforcement powers through the Public Bodies Bill.

2.4 In addition the Transition Trustees of the Canal and River Trust stated on 2 September 2011 in a meeting of the British Waterways Advisory Foundation that they want enabling powers. This means that a body that is unaccountable to Parliament will be able to impose draconian new legislation that adversely affects boat dwellers. This is contrary to the assurances given by the Waterways Minister Richard Benyon, who stated that BW was not seeking any new enforcement powers through the Public Bodies Act, in response to the concerns of boat dwellers who wrote to their MPs about the increased risk of homelessness for them of transferring BW to charity status.

2.5 Nigel Johnson stated in May 2011 that BW would not seek any extra enforcement powers. However, BW has drafted byelaws which it intends to pass after the move to charity status has been completed. These draft byelaws include provisions to create criminal offences of disobeying signs or instructions stating where and how long boats should moor—powers that Parliament did not consider appropriate for BW to have in 1995.

2.6 The consequences of giving BW extra powers and removing the statutory protection for boat dwellers arising from the Human Rights Act, the Equality Act and the Freedom of Information Act and other protections that currently stem from BW’s status as a public body, will be the actual or threatened homelessness, removal from school and denial of access to employment, healthcare, postal mail and voting of up to 10,000 adult and child boat dwellers.

2.7 The estimated 6,000 to 10,000 boat dwellers who do not have moorings for their boats will be at risk, in spite of the intention of Parliament to protect these boat dwellers when it passed the 1995 British Waterways Act.

2.8 Some 10% (3,800) out of the total of almost 38,000 boats on BW waterways do not have moorings (information from BW). The majority of these boats are people’s homes.

3. The Rights of BW Boat Licence Holders

3.1 The 1995 British Waterways Act entitles boat licence holders to use the waterways without a permanent mooring provided that they do not stay more that 14 continuous days in any one place.

3.2 s.17(3) of the Act states that in order to be licensed, a boat must be insured, must comply with safety standards, and must either have a permanent mooring or:

“(ii) the applicant for the relevant consent satisfies the Board that the vessel to which the application relates will be used bona fide for navigation throughout the period for which the consent is valid without remaining continuously in any one place for more than 14 days or such longer period as is reasonable in the circumstances” (s.17(3)(c)(ii)).
3.3 The intention of Parliament when it passed the 1995 British Waterways Act was to allow boat dwellers to continue to live on their boats without having a permanent mooring, in a way that enabled them to remain in employment; continue to send their children to school, and have protection from homelessness.

3.4 BW had originally sought criminal sanctions against anyone caught living on their boat without a permanent mooring including a Level 5 fine (£1,000 at the time) and a daily penalty of 10% of Level 5 (£100) (British Waterways Bill, 1990).

3.5 Parliament did not allow this and acted to protect the homes and livelihoods of boat dwellers (House of Commons Select Committee on the British Waterways Bill, 1993–94).

3.6 Consequently, the law allows boat dwellers to live on their boats without a mooring and remain within reach of a place of work, their children’s school, a GP or other health care, and to collect their mail from a land address. They can also exercise their right to vote by declaring a local connection.

3.7 In drafting the 1995 British Waterways Act, Parliament intended that the test for whether a boat was complying with s.17(3)(c)(ii) was whether it had remained longer than 14 continuous days in the same place without good reason.

3.8 The House of Commons Select Committee rejected any prohibition on returning to the same place within a specified period and declined to set any further requirements such as a minimum distance to be travelled.

3.9 The 1995 Act and other relevant legislation do not specify any particular travelling pattern for boats without moorings apart from the “14 day rule”. (House of Commons Select Committee on the British Waterways Bill, 1993–94).

4. BW’S ATTEMPTS TO CIRCUMVENT THE 1995 ACT

4.1 In 2001 BW began making attempts to circumvent the intention of Parliament relating to the meaning of “bona fide for navigation” as stated in s.17(3)(c)(ii) of the 1995 British Waterways Act in order to terminate the licences of boat dwellers who do comply with s.17(3)(c)(ii). The NBTA (and many others) believe this has been a long standing attempt to achieve the original objectives that Parliament considered would be detrimental to the lives of individuals and families living on boats.

4.2 BW has made successive attempts to force boats without moorings to follow travelling patterns which are substantially in excess of that required by the 1995 Act.

4.3 For example it has done this by claiming that its own interpretation of s.17(3)(c)(ii) (the Guidance for Boaters without a Home Mooring, previously the Mooring Guidance for Continuous Cruisers) sets out what is required to comply with the 1995 Act.

4.4 BW has the power to terminate a licence if it believes a boat has contravened s.17 of the 1995 Act, and it also has the power to seize an unlicensed boat and charge the owner for its removal under s.8 of the 1983 British Waterways Act.

4.5 When it does this it also obtains an injunction which effectively evicts the owner and the boat from BW waterways for life. In other words, termination of the boat licence means that the boat dweller and their family will become homeless, be forcibly deprived of their home and be banned from BW’s 2,000 miles of waterways for ever.

4.6 A number of boat dwellers have been made homeless in this way because they did not know enough about the law to defend themselves in court (Freedom of Information Act response from BW, 2010).

4.7 Many other boat dwellers have been pressurised to rent moorings which they cannot legally live on because most moorings do not have residential planning permission (personal communications from Geoff Mayers and Paul Davies).

4.8 Some have “gone underground” following the threat of a “s.8” [of the 1983 Act] notice and injunction and live in fear of being discovered and losing their homes.

4.9 The Guidance for Boaters without a Home Mooring, published in 2011, states that boats without moorings must travel in a pattern of movement from A to B to C and are not permitted to turn back from B to A unless they have reached a terminus, and that acceptable reasons for remaining in one place do not include needing to have access to a place of employment or education.

4.10 Adhering to the Guidance for Boaters Without a Home Mooring can prevent boat dwellers from accessing their places of work, education and health care; from collecting mail and from exercising their right to vote.

4.11 BW has attempted to enforce its interpretation of s.17(3)(c)(ii) by sending letters to thousands of boats over the past few years written in extremely threatening language claiming that not following its Guidance amounts to contravention of the law and saying (as examples)

"your boat has been seen between X and Y” (two distinct places which are many miles apart);
"we may remove and demolish your boat";
“it is likely that you will need to make arrangements for alternative accommodation. Please contact your local Council’s Benefit and Housing department as they may be able to help you find another place to live”; and “You are at risk of losing your boat”.

4.12 Some 150 boats on the Kennet and Avon canal were served such letters in June 2009 for example (BW enforcement letter to Pamela Smith).

4.13 At the same time, since 1995 BW has declined to use its statutory powers to enforce the “14 day rule” either consistently or fairly. This leaves boat dwellers without moorings in a position where there are no consistent consequences for staying longer than 14 days and yet they are routinely threatened with homelessness for travelling in a way that Parliament intended them to be able to do.

5. BW’s History of Attacks on Boaters Without a Home Mooring

5.1 It is not clear what triggered BW’s renewed efforts to remove boaters without a home mooring from its waterways. However during a short period of time between 2001 and 2001 Robin Evans was appointed as the new CEO of BW; there was a significant change in the composition of the non-executive board of BW in which two-thirds of the non-executive directors were replaced; Nigel Johnson was appointed as Legal Services Director and Secretary of BW and Sally Ash was appointed, by internal transfer within BW, as Head of Boating Development. All are in post at the time of writing and will continue in their positions after the transfer out of public ownership.

5.2 In May 2002, in the document entitled “A fresh look at BW’s craft licensing structure: Consultation Paper for Boaters May 2002”, BW attempted to increase the licence fee for a boat without a home mooring to 2.5 times that of the normal licence fee.

5.3 On 1 August 2002 BW proposed a “District Mooring Fee” for boats without a home mooring in its document entitled “A fresh look at BW’s craft licensing structure: Consultation update, 1 August 2002”.

5.4 In March 2003 BW published the Draft Moorings Code. This proposed that a boat without a home mooring must travel “at least 20 different Lock Miles every 15 days (ie you can’t count the same stretch more than once); at least 40 different Lock Miles every 30 days and at least 120 different Lock Miles every three months” and that the penalty for non-compliance with the 2003 Code was the termination of the boat licence. Following objections from some User Groups the 2003 Code was not implemented.

5.5 Also in 2003 BW discontinued the long-term use of its waterways in Scotland by boats without home moorings. BW did not have any lawful authority to do this. Section 37 of the 1995 British Waterways Act states that:

“(1) Subject to subsection (2) below, this Act extends to Scotland.”

(2) Nothing in this Act shall apply to Loch Lochy, Loch Oich, Loch Ness or Loch Dochfour, the boundaries of which are shown edged in red on the plan marked “The Scottish Lochs”. However, paragraph 3(c) of the current “Private Pleasure Boat Long Term Licences and Moorings—Scottish Highlands and Lowlands” states: “Long term use of the Highland and Lowland Waterways without a Home Mooring is not permitted due to the disconnected nature of the canals”. A 2002 consultation paper had declared BW’s intention to “discourage continuous cruisers” on its Scottish waters.

5.6 In 2004 BW published the Moorings Guidance for Continuous Cruisers. This stated:

“those using a boat licensed for continuous cruising must genuinely be engaged on a journey or series of journeys. Such journey or cruise must take place throughout the period of [the licence] and therefore requires progression around the network, or at least a significant part of it...The law requires a genuine progressive journey (a cruise) around the network or significant part of it.”

5.7 In 2005 BW in a document entitled “Licence Fee Consultation June 2005”. BW proposed to increase the licence fee for boats without a home mooring by 147%. It was identified in a report by BW entitled “Fee Structures for Boat Licences in England and Wales. White Paper” of 23 November 2005 that if implemented, this proposal would have raised £1 million from only 1,360 boat licence holders.

5.8 In 2011 a survey by boaters sampled boat dwellers without home moorings on the Kennet and Avon canal. Some 51% of the survey sample were found to have an annual income below £20,000 and 40% were earning the minimum wage or less.

5.9 It is clear therefore that BW was targeting the most deprived demographic group of users of the nation’s waterways and those the least able to pay. Apart from being grossly unjust it is also self-explanatory that the motivation of BW was to price out boat dwellers without home moorings.

5.10 In 2008 BW unilaterally amended the Boat Licence Terms and Conditions (in violation of the Government Code of Practice on Consultations) to include an obligation on boaters without a home mooring to abide by the Moorings Guidance for Continuous Cruisers.
5.11 On 5 September 2008 BW issued a consultation document to the User Groups entitled “Boat Licence Fees—For information & comment on by Waterway User Groups”. This document included a proposal to increase the licence fee for boats without home moorings by £150 in comparison to the published tariff. BW also proposed to introduce chargeable Roving Mooring Permits.

5.12 On 22 April 2009 BW released the Pre-Consultation document on mooring policy to User Groups. This document stated on page 14 an intention of BW to adopt a strategy that:

“forces a re-think in lifestyle by the offending boaters”.

This is a reference to users of boats without a home mooring that decline to abide by the 2004 guidance but move their boats every 14 days in compliance with s.17(3)(c)(ii).

5.13 It is clear from this document that BW was intent on marginalising and persecuting users of boats without a home mooring by publicising this phraseology to User Groups and by the use of the word “offending” was making it clear that it regarded the Mooring Guidance for Continuous Cruisers as binding in law. This also signalled BW’s intent to carry out summary wholesale eviction of boaters without home moorings from its waterways.

5.14 In June 2009 it became apparent that BW had changed the Continuous Cruising Procedure (the enforcement procedure for boats without a home mooring) by introducing a requirement for a boat without a home mooring to engage in a progressive journey.

5.15 The version of the CC1 (which is the first in a series of five enforcement notices) dated December 2007 stated:

“According to our records, you do not have a mooring where you can lawfully leave your boat and we have noticed that your boat has been moored at _____ for longer than 14 days”.

5.16 On 29 June 2009 BW served CC1 letters on about 150 boats that stated:

“According to our records, you do not have a mooring where you can lawfully leave your boat and we have noticed that your boat has been moored in the (X to Y) area since 2 March 2009”. X and Y in this instance are 12 miles apart.

5.17 The majority of the boats in question had travelled a reasonable distance (specifically to a new place) every 14 days. They did not however at the time progress around the canal system but remained predominantly in the area between Bath and Devizes. The change in the wording of the CC1 letter identifies that BW is dissatisfied that movement wholly within an area spanning 12 miles (irrespective of the number of places located within this area); and (by implication) movement that does not constitute a progressive journey meets the requirements of s.17(3)(c)(ii).

5.18 Between June and September 2009 BW held four closed meetings with representatives of Bathampton and Claverton Parish Councils (both within the jurisdiction of Bath and North East Somerset Council) and aimed at restricting access to 14 day moorings in Bathampton and Claverton by boat dwellers without a home mooring. In the minutes of a meeting held at Kennet Court, Bathampton on 10 June 2009 these boat dwellers were identified as “illegal live-aboards”.

5.19 In February 2011 BW issued the Draft Mooring Management Plan for the River Lea, Stort and Hertford Union and Regents Canals that specified conditions including that users of boats without home moorings must not remain for more than 7 days at a time on large stretches of the Lee and Stort Navigation and must travel distances that would have meant detaching themselves from connections to any locality on the navigation. This policy was withdrawn by BW following opposition from users of boats without home moorings in London and from User Groups including London Boaters.

5.20 In September 2011 BW issued a revision to the Lee Mooring Policy that specified the introduction of Roving Mooring Permits.

5.21 In October 2011 BW published a revised version of its interpretation of s.17(3)(c)(ii) following the judgement in Bristol County Court (see below) entitled Guidance for Boaters Without a Home Mooring. This is in essence the same as the 2004 Mooring Guidance for Continuous Cruisers with minor changes.

5.22 In October 2011 the Boat Licence Terms and Conditions were further amended to include an obligation to abide by the 2011 Guidance.

6. BRISTOL COUNTY COURT JUDGEMENT

6.1 In 2010 BW took action against Paul Davies in Bristol County Court on the grounds that he had not complied with s.17(3)(c)(ii).

6.2 The judgement stated that Mr Davies’ cruising distance was not enough to comply but declined to endorse BW’s Mooring Guidance for Continuous Cruisers.

6.3 The Court did not hear evidence regarding the House of Commons Select Committee deliberations in 1993–94 because this information was not available to Mr Davies at the time.
6.4 Despite the judgement being in a county court and consequently not forming case law, BW issued a press release misleading the public into believing that this judgement set a precedent which would apply to other boaters without moorings.

6.5 BW subsequently sent letters to a number of boats without moorings enclosing this press release, claiming that the judgement applies and that they are contravening the law even though they do move to a different place every 14 days (personal communication from Abigail North).

6.6 The resulting 2011 Guidance for Boaters Without a Home Mooring also misleadingly claims that the Bristol judgement is binding on other courts.

7. Recent Proposals by BW for Additional Restrictions on Boat Dwellers Without Moorings

7.1 Since the publication in 2004 of the Mooring Guidance for Continuous Cruisers there have been successive attempts to drive out boat dwellers without moorings by imposing additional restrictions.

7.2 BW has worked with parish and county councils which object to the legitimate presence of lived-in boats on the canals to create restrictions on the amount of time boats without moorings can stay in particular areas (Minutes of meetings held in Bathampton on 15 June, 10 August, 28 August and 10 Sept 2009; Waterways and Public Involvement in Staffordshire 2011; Community Mooring Strategy Action Plan 2011).

7.3 This led to a consultation in 2009 and the publication in 2010 of new mooring policies stating that boats without moorings would be subject to “Local Mooring Strategies” including restricting the amount of 14-day mooring space available; setting travelling distances and “no return within” restrictions substantially above and beyond those required by the 1995 Act; charging boaters daily fees of up to £14,000 per year to stay longer than the time limits, and enforcing these charges by not renewing the boat licence until the charges are paid.

7.4 All of these restrictions are unlawful and are targeted against boats without moorings. BW is currently seeking to impose such restrictions on:

- the Kennet and Avon canal;
- the Lee and Stort navigations;
- in Oxford;
- in Staffordshire; and
- is proposing to do so in many other locations (Policies for Mooring Along the Banks of BW Waterways 2010; Management of Moorings along the Rivers Lee and Stort, Hertford Union and Regents Canals 2011).

7.5 The effect of these restrictions if complied with would be to force boat dwellers to travel distances that would prevent them from being able to travel to a place of employment; prevent them from sending their children to school; prevent them from accessing ongoing health care from a GP, clinic or hospital; prevent them from collecting mail from a land address, and prevent them from exercising their right to vote by making a declaration of local connection.

7.6 If they wish to retain access to their workplace, school, health care, correspondence and right to vote, they will face homelessness following termination of the boat licence either for not complying with the restrictions or for being unable to pay excess mooring charges of up to £14,000 per year demanded at £40 per day.

7.7 These are punitive sums compared to the cost of a permanent mooring which is around £2,000 per year and as such amounts to a fine even though it is called a “charge for an extended stay” in BW’s 2010 mooring policy.

7.8 In a meeting of the Kennet and Avon canal Local Mooring Strategy on 11 October 2011, BW Enforcement Operations Manager Paul Griffin stated that “you can’t continuously cruise [ie live on a boat without a mooring] and have a job or send your children to school” (personal testimony of Pamela Smith). Mr Griffin’s statement demonstrates that BW has a policy of harassment of boat dwellers without home moorings that is designed to force them to give up their homes, and that local mooring strategies are another attempt to achieve this objective.

8. Lawfulness of Proposed Restrictions

8.1 The restrictions proposed in local mooring strategies are unlawful because BW does not have the power to set mooring restrictions, to erect signs delineating mooring restrictions, or to impose fines for the infringement of mooring restrictions. (House of Commons Select Committee on the British Waterways Bill, 1993–94).

8.2 BW enjoys a “catch all” power under s.43 of the 1962 Transport Act in relation to its management of the waterways. However it is reasonable to conclude that subsequent legislation modifies this “catch all” accordingly. Further, legislation that acts as an “override” (such as the Human Rights Act and the Equality Act) further qualify this “catch all”. As stated above, Parliament did not allow BW to impose criminal sanctions or daily fines against anyone caught living on their boat without a permanent mooring.
8.3 In the original 1990 Bill BW had sought powers to impose fines for a breach of a mooring restriction. BW also sought powers in the 1990 Bill to post signs designating mooring restrictions. Parliament forbade BW to impose fines for violation of a mooring restriction. As a result of this, BW withdrew the wording relating to the posting of signs designating mooring restrictions.

8.4 BW had previously presented evidence that stated that signs designating mooring restrictions were advisory in nature. BW also withdrew the wording relating to the designation of mooring restrictions.

8.5 BW had also laid out in the 1990 Bill an offence for failing to obey an instruction of a BW officer which was also denied by Parliament.

8.6 The Commons Select Committee also rejected any “no return within” restrictions (House of Commons Select Committee on the British Waterways Bill, 1993–94).

8.7 As a consequence this meant that BW was confirming that any mooring restriction would remain as “advisory” and not “obligatory”.

8.8 A further principle in law is that legislation is written in “living words” and the meaning of the words does not change with changing circumstances. The current legislation is binding and must be interpreted in the courts in line with the original meaning of the words and the original Will of Parliament.

8.9 These factors combine to provide an override over s.43 of the 1962 Transport Act so as to prevent BW from designating compulsory mooring restrictions and from setting movement rules beyond what is in s.17(3)(c)(ii) of the 1995 Act (the “14 day rule”).

8.10 In this context the authority given in McCarthy and Stone (Developments) Ltd v Richmond upon Thames LBC [1989] UKHL 4 in which reference is also made to the authority given in Attorney-General v Wilts United Dairies Limited [1922] 38 TLR 781 (HL) further underlines the principle that a public body such as BW may not make a charge unless there is express authorisation in statute to do so.

8.11 Furthermore, in R v Secretary of State for the Environment and others, ex parte Greenpeace Ltd and anr [1994] 4 All ER 352, Potts J stated: “Primary legislation is not to be construed by reference to general policy statements or departmental guidance”. In other words, primary legislation stands on its own two feet.

8.12 Where guidance or policy statements are used to justify the interpretation of legislation by a public body so that the public body may achieve its objective, that public body is inherently going beyond the scope of the primary legislation and is acting ultra vires.

9. Harassment of Boat Dwellers

9.1 In another case in Bristol, BW is attempting to seize a boat and remove the owner George Ward from its waterways by way of an injunction for non-payment of a debt of £150.

9.2 Tenants of houses are explicitly protected from eviction for debts of this size.

9.3 In Cheshire in 2010, BW forced sick pensioners and their carers to move their boats in freezing conditions with the result that one of them had to be rushed to hospital the following day.

9.4 BW has also issued patrol notices requiring boats to move when they have been prevented from travelling by thick ice (personal communication from Geoff Mayers).

9.5 Paul Davies himself has been forced to give up his job and leave BW waterways. He was unable to meet the Court’s requirement to comply by taking a mooring because no residential moorings were available (personal communication from Paul Davies).

9.6 In his efforts to leave the jurisdiction of BW, Paul Davies travelled along the Kennet and Avon Canal, down the Thames to London intending to travel along the Grand Union and thus onto EA waters in East Anglia where he had secured a mooring from the EA.

9.7 Mr Davies intended to enter the Grand Union Canal from the tidal Thames at Brentford on the afternoon of 5 June 2011. When he arrived at Thames lock, Brentford, he was denied entry to the canal on the grounds that he did not have a licence, even though he was within the time limit the Court had set for removing his boat. This action by BW left him without suitable gear and in a vessel ill-equipped to be on the tidal Thames in a running tide, a highly dangerous state for a navigator. This action by BW was unlawful.

9.8 The judgement in Moore v British Waterways Board [2012] EWHC 182 (Ch) explicitly stated that a licence is not required to navigate the stretch of the Grand Union Canal between Thames lock and Brentford Gauging locks. It is not known when BW began unlawfully demanding licences for passage of this stretch, but in 1981 licences were checked and/or sold to new arrivals at the Brentford Gauging locks and not at Thames lock (which is further downstream).

9.9 The NBTA intervened including sending a FLASH message to the BW Executive Board. The Port of London Authority were made aware of the circumstances. Mr Davies was finally granted ingress to the canal the following morning but not before spending the night in an extremely precarious and dangerous position.
9.10 It appears that BW, not content with driving Mr Davies out of the canal system then sought to endanger his life (personal communication from Paul Davies).

9.11 At the 2010 BW AGM an attendee asked why the draft objectives of the new waterways charity made no mention of the thousands of adults and children who live on boats for whom the waterways are their home.

9.12 Robin Evans, BW Chief Executive said in response “It’s questionable that giving people places to live is a charitable object”.

9.13 The NBTA believes that BW is clearly not fit to have charitable status. Over 1,000 Housing Associations have charitable status yet Mr Evans is unaware of this.

9.14 During the years to 2010 BW drafted revised byelaws which include many of the provisions which Parliament prevented it from including in the 1995 Act. These byelaws have been put on hold pending the transfer to a charity (Revised Draft Byelaws 2010).

9.15 If the Canal and River Trust is given enabling powers and powers to make subordinate legislation there is no doubt that it will use those powers to achieve BW’s 1990 objectives of driving out boat dwellers without moorings which Parliament would not allow it to do in 1995.

9.16 The homelessness and displacement resulting from this would be unthinkable in any event.

9.17 However in 2011 the EU announced a strategy to integrate Europe’s 11 million Gypsies and Travellers and the UK was given until the end of 2011 to draw up a national plan to ensure that every homeless Traveller has access to suitable accommodation.

9.18 Itinerant live-aboard boaters are defined as being “Bargee Travellers”. The Equality Officer of Wiltshire Council has confirmed that Bargee Travellers fall under the ambit of the Equality Act 2010 and as such enjoy “protected characteristics”. It follows that itinerant live-aboard boaters fall within the scope of the EU Gypsy and Traveller initiative and as such BW has a role to play in actively supporting itinerant live-aboard boaters rather than persecuting them.

9.19 In April 2009 the Secretary of State for Communities wrote to the NBTA and confirmed that Bargee Travellers fell under the scope of s.225 Housing Act 2004. This section refers to an obligation of housing authorities to take into account the needs of travellers within its jurisdiction.

9.20 Bargee Travellers have historically been excluded from the bi-annual caravan counts (forming part of the Gypsy and Traveller Accommodation Assessments (GTAAs) carried out by local authorities within their responsibilities under s.225).

9.21 One might have assumed that after the determination of the Secretary of State in 2009, that Bargee Travellers would be included in forthcoming GTAAs and therefore guidance would be issued to local authorities to act as such. No such guidance was made.

9.22 In March 2011 (after the Secretary of State for Communities withdrew Circular 01/06, clarifying support for caravan-dwelling travellers by local authorities) the SoS denied that he had (1) made the determination that he had, in April 2009 and (2) denied that the communication he sent in 2009 was in fact a determination at all.

9.23 Given that BW has within its jurisdiction a significant number of itinerant live-aboard boaters and given the ambiguous performance of the Secretary of State it follows that BW must be regarded as a quasi-housing authority insofar as it holds jurisdiction over the stated community.

9.24 Instead of upholding its obligations (whether statutory or quasi-statutory) in the recognition and adoption of considerable research and guidance relating to caravan-dwelling travellers, BW appears content in the alternative to systematically persecute itinerant live-aboard boaters.

9.25 In the public meetings held by BW on 1 and 2 March 2011, forming part of the consultation of the proposals for mooring restrictions on the River Lee, BW stated that its objective was to “curtail new entrants into the live-aboard continuously-cruising market” It also stated that its objective was to “price-out existing live-aboard continuous-cruisers” and that “some members of the community will suffer as a result”.

9.26 To the NBTA, the policy of BW appears to be quite clearly a systemic and persistent policy of oppression and harassment of boat dwellers without home moorings. The NBTA believes that this violates their fundamental right to respect for their homes pursuant to Article 8 of the European Convention on Human Rights, and that a lack of respect for home by the state is the most extreme form of state intervention short of death or serious injury (Kay and Others v The United Kingdom [2010] Application 37341/06). A member of the NBTA has therefore sought permission for judicial review of this policy.

10. Conclusion

10.1 The staff and particularly the Senior Managers and Directors of the Canal and River Trust will be the same as those of BW. The NBTA therefore has no confidence that the Canal and River Trust will be any different in its policy towards boat dwellers without moorings but will continue the same policy of harassment by attempting to enforce movement rules that are beyond its legal powers contrary to the intention of Parliament when it passed s 173 ci of the 1995 British Waterways Act.
10.2 The NBTA therefore does not believe that the draft Order serves the purpose of improving the exercise of public functions. Increasing the risk of homelessness and harassment to a minority group will be detrimental to the exercise of the functions of British Waterways. It will result in a greater burden on the public purse due to the cost of supporting boat dwellers who are made homeless or forced to give up their homes. There will be costs associated with providing them with social housing, housing benefit, other benefits such as Pension Credit and Jobseekers Allowance, and with supporting children who are displaced from their schools.

10.3 It is time that boat dwellers had proper legal protection for their homes and are recognised as a protected minority group. This is of great political and legal importance.

11. Recommendations by the NBTA

11.1 In order to protect boat dwellers from homelessness, the functions of BW should not be transferred unless and until the following conditions are met.

11.2 Section 43 (3) of the 1962 Transport Act should be declared incompatible with the European Convention on Human Rights:

11.3 Sections 13 (2) (3) and (4) of the 1971 British Waterways Act should be repealed;

11.4 Sections 8 (1) (2) (3) and (4) of the 1983 British Waterways Act should be repealed;

11.5 The Canal and River Trust should not have the power to bring injunctions banning boat owners from its waterways for life;

11.6 The Guidance for Boaters Without a Home Mooring and plans for Local Mooring Strategies should be abandoned;

11.7 The February 2010 Revised Draft Byelaws should be abandoned;

11.8 The powers of BW or the Canal and River Trust to make “subordinate legislation” should be restricted to the existing Byelaw making powers under the 1954 British Transport Commission Act.

11.9 The Canal and River Trust should not be granted enabling powers.

11.10 In place of these powers, which are inappropriate for a 21st century charitable body, the following powers and duties should be established:

— Legal recognition of the homes of boat dwellers on a par with that enjoyed by house dwellers.
— Statutory protection of boat dwellers from harassment and unlawful or summary eviction, of the same magnitude as the protection enjoyed by house dwellers, applicable to all boat dwellers on inland and coastal waters, whether or not they have a permanent mooring.
— Clarification that the test for compliance with s.17(3)(c)(ii) of the 1995 British Waterways Act is as intended by Parliament, namely, whether the boat has remained in one place for longer than 14 days without good reason.
— Explicit recognition that boat dwellers without permanent moorings are classed as travellers for the purposes of s.225 of the 2004 Housing Act; the 2010 Equality Act; the Human Rights Act and the 2011 EU requirement to draw up a national plan to ensure that every homeless traveller has access to suitable accommodation.
— Security of tenure for mooring holders on a par with that enjoyed by the tenants of houses.
— Statutory protection from increases in boat licence fees and mooring fees on a par with that enjoyed by the tenants of social housing in respect of rent increases.
— The Canal and River Trust explicitly classified as a housing authority.

11.11 The charitable purposes of the Canal and River Trust should include:

The relief of poverty;
The protection of the homes of boat dwellers; and
The provision of waterway space for boat dwellers to both travel in without permanent moorings and to keep their homes permanently moored.

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(copies can be provided on request)

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I am writing to you to express my concerns about the Draft Statutory Instrument, the British Waterways Board (Transfer of Functions) Order 2012.

I am a Continuous Cruising Boater, living on my narrowboat and cruising the inland waterways. I am very concerned about the impact that the transfer of British Waterways to the Canal and River Trust may have on me—particularly as my boat is my sole home.

As I understand it, the Transfer Order as it now stands does not include specific protection for those for whom their boat is their home.

The powers that the Canal and River Trust will have that I am most concerned about are:

1. The power to decide to stop offering the Continuous Cruising Licence. The Canal and River Trust could decide that they wish to require all boats to have a home mooring. I neither want nor need a home mooring as my work takes me across the country. Having to pay for a home mooring would be a considerable expense to me, and, because most towpath moorings would be sold by the Canal and River Trust, it would be in their financial interest to compel all boats to have a home mooring so that they could earn extra money. I do not think that it is inconceivable that they would do this, particularly if their financial projections for income turn out to be overgenerous.

2. The power to refuse to licence a boat. The Terms and Conditions for Licensing explicitly state the British Waterways (and so, the Canal and River Trust) reserve the right to refuse to licence a boat. While their terms refer to them doing so where a boat has contravened the licensing conditions, I have not seen evidence that states that there is anything to prevent British Waterways (or the Canal and River Trust) from refusing to licence a boat, or a way of appealing a decision to refuse to license a boat where a boater may think that the refusal is unjust or not based in law. If my licence were refused for whatever reason, I would be at risk of having my home taken away from me and destroyed—and be made homeless. I think this is far too much power for a private charity to have—the power to make someone homeless—given that there would be less recourse to judicial review with a private charity then there currently is with British Waterways as a public body. The transfer of British Waterways to either charity status or to a private company will remove the minimal protection I have for my home that derives from British Waterways status as a public body.

3. The power to raise licence fees at whatever rate they feel appropriate. In testimony to the Committee during the week of 12 March, British Waterways officials were not able to give a firm commitment that they would not raise the licence fee more than 2% plus inflation—only that they hoped that this would be the case. As I understand it, there has been no legally binding commitment on licence fees as part of the Transfer Order or Public Bodies Bill. I think the committee could make a comparison (particularly as regards boat dwellers) between the licence fee and Council Tax—but the licence fee is unaffordable for me—which would mean that I would not be able to pay it and I would lose my home, and be made homeless. I think it is relevant to point out that, though there is an “elected Council” as part of the new Canal and River Trust, this Council has no real powers aside from the power to dismiss and appoint trustees—and trustees have the power to dismiss Council Members! The Council cannot create binding policy or rules—and only exists as a body to be consulted.

Other things that concern me are:

1. At the moment, the Canal and River Trust is not registered as a Trust or Charity, but as a public liability company. Boaters and stakeholders were told that the new Trust would, in fact, be a charity. I do not think any assets, powers, or responsibilities should be transferred to the Canal and River Trust until it is properly registered as a charity.

2. I do not feel that the issue of British Waterways was discussed in appropriate depth during the Commons Committee stage of the Public Bodies Act. The House of Lords Delegated Powers and Regulatory Reform Committee expressed concern in 2011 about the appropriateness of transferring the existing powers of British Waterways to make subordinate legislation; powers of forcible entry, search or seizure; powers to compel the giving of evidence and powers whose exercise will necessarily affect the liberty of an individual, to a private sector body that does not otherwise exercise any public functions.

Written evidence submitted by Peter MacDonald

I am a Continuous Cruising Boater, living on my narrowboat and cruising the inland waterways. I am very concerned about the impact that the transfer of British Waterways to the Canal and River Trust may have on me—particularly as my boat is my sole home.

As I understand it, the Transfer Order as it now stands does not include specific protection for those for whom their boat is their home.

The powers that the Canal and River Trust will have that I am most concerned about are:

1. The power to decide to stop offering the Continuous Cruising Licence. The Canal and River Trust could decide that they wish to require all boats to have a home mooring. I neither want nor need a home mooring as my work takes me across the country. Having to pay for a home mooring would be a considerable expense to me, and, because most towpath moorings would be sold by the Canal and River Trust, it would be in their financial interest to compel all boats to have a home mooring so that they could earn extra money. I do not think that it is inconceivable that they would do this, particularly if their financial projections for income turn out to be overgenerous.

2. The power to refuse to licence a boat. The Terms and Conditions for Licensing explicitly state the British Waterways (and so, the Canal and River Trust) reserve the right to refuse to licence a boat. While their terms refer to them doing so where a boat has contravened the licensing conditions, I have not seen evidence that states that there is anything to prevent British Waterways (or the Canal and River Trust) from refusing to licence a boat, or a way of appealing a decision to refuse to license a boat where a boater may think that the refusal is unjust or not based in law. If my licence were refused for whatever reason, I would be at risk of having my home taken away from me and destroyed—and be made homeless. I think this is far too much power for a private charity to have—the power to make someone homeless—given that there would be less recourse to judicial review with a private charity then there currently is with British Waterways as a public body. The transfer of British Waterways to either charity status or to a private company will remove the minimal protection I have for my home that derives from British Waterways status as a public body.

3. The power to raise licence fees at whatever rate they feel appropriate. In testimony to the Committee during the week of 12 March, British Waterways officials were not able to give a firm commitment that they would not raise the licence fee more than 2% plus inflation—only that they hoped that this would be the case. As I understand it, there has been no legally binding commitment on licence fees as part of the Transfer Order or Public Bodies Bill. I think the committee could make a comparison (particularly as regards boat dwellers) between the licence fee and Council Tax—but the licence fee is unaffordable for me—which would mean that I would not be able to pay it and I would lose my home, and be made homeless. I think it is relevant to point out that, though there is an “elected Council” as part of the new Canal and River Trust, this Council has no real powers aside from the power to dismiss and appoint trustees—and trustees have the power to dismiss Council Members! The Council cannot create binding policy or rules—and only exists as a body to be consulted.

Other things that concern me are:

1. At the moment, the Canal and River Trust is not registered as a Trust or Charity, but as a public liability company. Boaters and stakeholders were told that the new Trust would, in fact, be a charity. I do not think any assets, powers, or responsibilities should be transferred to the Canal and River Trust until it is properly registered as a charity.

2. I do not feel that the issue of British Waterways was discussed in appropriate depth during the Commons Committee stage of the Public Bodies Act. The House of Lords Delegated Powers and Regulatory Reform Committee expressed concern in 2011 about the appropriateness of transferring the existing powers of British Waterways to make subordinate legislation; powers of forcible entry, search or seizure; powers to compel the giving of evidence and powers whose exercise will necessarily affect the liberty of an individual, to a private sector body that does not otherwise exercise any public functions.
Generally, I am concerned that many powers and assets may be handed to a private company (as the Canal and River Trust now is a PLC, having not registered as a charity) and that there has been insufficient consideration of the impact that this will have on people who make their boat their home. While I can understand the benefits of creating a charity to run the waterways, and some of the opportunities that this might provide, I remain unconvinced and deeply concerned that significant assets, powers, and the ability to create regulations that will directly impact on my life and my home are being transferred to a body that, at the moment, simply is not ready nor fit to manage them. I also feel that there are not enough safeguards or access to methods of appeal of the Canal and River Trusts decisions (or indeed regulations they may choose to introduce through their power of enabling legislation).

March 2012

Written evidence submitted by Graham Phillips

I am writing to you to express my concerns about the Draft Statutory Instrument, the British Waterways Board (Transfer of Functions) Order 2012. Please ensure that this order does not become law.

I am extremely concerned that the transfer of British Waterways to charity status will result in boat dwellers like me and my family being made homeless by the Canal and River Trust. The transfer order should not be passed until the Government introduces specific statutory protection for boat dwellers from harassment and unlawful eviction, applicable to those both with and without permanent moorings, equal to that enjoyed by the tenants of houses.

A search at Companies House shows that Canal and River Trust is a private limited company (No. 78072760) incorporated on 12 October 2011, and yet the Charities Commission has said recently that it has not received an application to register the Canal and River Trust as a charity. In other words, the waterways are being transferred to a private company, not to a charity. Sections 5.17 and 5.18 of the Articles of the Canal and River Trust Company show that it has an unlimited power to dismember and dispose of the waterways system for cash, piecemeal, whether directly through sale, or by default through financial failure to repay loans. This means that canal network be amongst a multitude of separate private businesses the railways. The break-up and privatisation of the canal network would further reduce the minimal protection that boat dwellers have for our homes due to both profiteering and to the sheer fragmentation of the regulatory framework leading to an even poorer compliance of navigation authorities’ enforcement practices with the law.

The issue of British Waterways was not discussed at all in the Commons Committee stage of the Public Bodies Act. Therefore the extremely serious issues raised and submitted to the Committee by many boat dwellers regarding the risk of homelessness and the violation of our Article 8 rights resulting from the transfer were not considered before the Act became law. Please rectify that omission by considering these issues now. The House of Lords Delegated Powers and Regulatory Reform Committee expressed concern in 2011 about the appropriateness of transferring the existing powers of British Waterways to make subordinate legislation; powers of forcible entry, search or seizure; powers to compel the giving of evidence and powers whose exercise will necessarily affect the liberty of an individual, to a private sector body that does not otherwise exercise any public functions.

In addition, the Transition Trustees of the Canal and River Trust stated that they wanted enabling powers in a meeting with the RBOA in September 2011. This means that an unaccountable body will be able to impose draconian new restrictions that adversely affect boat dwellers. BW have already drafted a set of over 60 new bylaws which they are waiting until after transition before implementing.

Boat dwellers have no legal recognition or protection for their homes. The transfer of British Waterways to either charity status or to a private company will remove the minimal protection we have for our homes that derives from British Waterways status as a public body, namely the Human Rights Act, the Equality Act, in part the Freedom of Information Act, and the Government’s Code of Practice on Consultations. This must not be allowed to happen.

British Waterways have, time and time again been shown to be unTRUSTworthy and as many of the Transition Trustees, including the Chairman, are the same people, this probably won’t cease. Over the previous 10 years or so the Board of BW have made many bad investment decisions, including the joint pub partnership, British Waterways Marinas Ltd and recently lost £30,000,000 alone in Gloucester Quays, resulting in the loss of many many millions of pounds of taxpayers and boaters’ license fee money. The board have in the past enjoyed extravagant salaries, bonuses and pensions which, in my humble opinion, they have no right to given their track record.

Investment in the waterways has fallen year on year at the admission of BW until now when certain sections are in a parlous state. The money that the government has been given to the board of BW has been lost and now the Canal And River trust is due to take control of millions of pounds of the “Property Portfolio” which actually belongs to the tax payer, and a £39,000,000 per annum handover for the next 15 years to flitter away at its own discretion without any scrutiny from Government.

March 2012
Supplementary written evidence submitted by Department for Environment, Food and Rural Affairs

Thank you for your letter of 14 March, further to the evidence session held the previous day by your Committee on the Draft British Waterways Board (Transfer of Functions) Order 2012 and the Draft Inland Waterways Advisory Council (Abolition) Order 2012. In your letter you asked for further information and clarification on the following issues:

1. A copy of the transfer scheme to be made under section 23 of the Public Bodies Act 2011 transferring British Waterways’ property, assets, rights and liabilities to Canal and River Trust (CRT);
2. The funding model used by Defra and British Waterways/CRT setting out the projections for commercial income streams for CRT over the next 15 years;
3. Clarification of the impact on government funding for CRT should the projected income streams from the commercial assets not be realised.

I will take the points in order, and hope the explanations which follow are helpful.

TRANSFER SCHEME

I enclose the draft Transfer Scheme at annex A. Although still a draft, it is at an advanced stage. The Secretary of State will make the Transfer Scheme in exercise of the powers conferred by section 23 of the Public Bodies Act 2011. The Transfer Scheme will have the effect of transferring the property, rights and liabilities of British Waterways in England and Wales to the Canal & River Trust, while also maintaining the remaining property, rights and liabilities with the residual British Waterways Board, operating solely in Scotland. It is designed to complement the transfer of statutory functions to CRT under the Order itself.

The Transfer Scheme has a default provision that, where not otherwise stated, all property, rights and assets of British Waterways will transfer to the Canal & River Trust. This is designed to ensure that any unidentified liabilities rest with CRT rather than British Waterways (once operating solely in Scotland). It lists in Schedule 1 (pages.5–9) the property, rights and liabilities which will remain with British Waterways (in Scotland).

The Scheme lists in Schedule 2 (pages 9–10) the property, rights and liabilities which will transfer to CRT’s subsidiary Community Interest Company. CRT is in the process of establishing the CIC, the articles of which will be deposited with the CIC Regulator in due course. This company will hold those assets which a charity may not hold directly because they amount to engagement in trading. It will be required to repatriate all profits to CRT, to be spent in line with CRT’s objects. This is a common arrangement for charities which carry out trading activities to financially support their main purposes.

The Scheme contains in Schedule 3 (p.10) a list of all the infrastructure property which will be held as part of the Waterways Infrastructure Trust (this is identical to the list contained in the draft Trust Settlement, which has already been submitted to the Committee).

Lastly, it obliges CRT to register the land transferred to it with the Land Registry, distinguishing between the land it owns in its own right and the land it holds on charitable trust.

The draft Transfer Scheme will continue to develop as we finalise the setting up of the Community Interest Company. We have also shared this draft (and earlier versions) with the Scottish Government, which is initiating the Scottish Parliament’s consent procedures to the draft Transfer Order.

FUNDING MODEL WITH PROJECTIONS FOR COMMERCIAL INCOME STREAMS

You asked for details of the funding model used by Defra and British Waterways/CRT setting out the projections for commercial income streams for CRT over the next 15 years. I have asked Tony Hales, the Chair of CRT’s Trustees, to cover this in a separate letter, which he will be sending you to meet your deadline of next Tuesday.

GOVERNMENT FUNDING IF PROJECTED COMMERCIAL INCOME DOES NOT MEET EXPECTATIONS

You asked for clarification of the impact on Government funding for CRT, should the projected income streams from the commercial assets not be realised. The Government has every confidence in the viability of CRT’s business model and in the projections of income that have been made. As Tony and one of my officials explained to the Committee, CRT has made prudent assumptions of income, based—in the case of the commercial income—on BW’s long experience of managing the portfolio over many business cycles, income—on BW’s long experience of managing the portfolio over many business cycles, and—in the case of the charitable income—on market research and benchmarking. I should be clear that the Government is transferring the full risks of the business to CRT, on the terms outlined in the Heads of Terms (a draft of which was sent to your Committee). If CRT does not generate the income expected, the Government will expect CRT to cut its cloth accordingly, through efficiencies and rigorous prioritisation of expenditure. There is no expectation that the Government will make additional grant available during the 15 year funding period.
**Additional Points of Clarification**

In addition to the three questions you raised, I should like to take this opportunity to address two further points which may help in your consideration.

*The Protector Mechanism for the protection of the Commercial Property Portfolio*

As CRT, BW and Defra explained to the Committee last Tuesday, we have agreed that a “Protector” should be employed to ensure that the property portfolio is used for the purposes for which it is intended. I attach at Annex B a draft copy of the annex to the Grant Agreement which sets out the intended role of the Protector. In summary this is: to monitor management by CRT of the property portfolio; to report regularly to the Secretary of State about whether CRT’s investment strategy will achieve the purposes for which the property portfolio was intended; and if necessary to issue warnings on a “traffic light” scale if the protector thinks these purposes are not being achieved. The mechanism sets out the remedies available to the Secretary of State in the event that the protector issues a “red warning”.

*Tax neutrality provisions*

Finally, I should like to draw your attention to the Government’s intention to bring forward a Tax Neutrality Order under section 25 of the Public Bodies Act. This is needed because of the legal means by which we are moving British Waterways in England and Wales into civil society. Because we are achieving this through a transfer of assets and liabilities from the public corporation to the charity (rather than through a legal transformation of the public corporation itself), certain forms of taxation, such as corporation tax and stamp duty tax, would fall to be paid by the residual BW (which will continue to operate in Scotland) and by CRT respectively if we took no other action. In order to forestall this potential tax liability, Treasury Ministers have agreed to bring forward a neutrality Order. HMRC expect to lay the draft Tax Neutrality Order, which will be subject to the negative procedure, in Parliament in late April or early May.

I hope that this helps the Committee in its further consideration of this Order, but I stand ready to provide any further information or clarification.
Annex A

DRAFT

The British Waterways Board Transfer Scheme 2012

Made ***
Coming into force ***
Laid before Parliament ***

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Whereas:
The Secretary of State for Environment Food and Rural Affairs has decided to transfer the undertaking of British Waterways in England and Wales to a charity, Canal & River Trust.

Canal & River Trust is to hold certain waterways infrastructure property as the trustee of the Waterways Infrastructure Trust, a charitable trust which the Secretary of State has established for that purpose. The Secretary of State and Canal & River Trust have agreed that the Canal & River Trust must use the other property transferred to it under this Scheme (which it does not hold as trustee) in pursuit of certain specified purposes which have been agreed and formally recorded by the Secretary of State and Canal & River Trust.

The Secretary of State, in exercise of the powers conferred by section 23 of the Public Bodies Act 2011 makes the following Scheme.

The Secretary of State has made the British Waterways Board (Transfer of Functions) Order 2012, an order under section 5 of the Public Bodies Act 2011 transferring functions from the British Waterways Board to Canal & River Trust. This Transfer Scheme is made in connection with that order.

Canal & River Trust, a registered charity, has consented to this Scheme.

Citation and commencement
1.—(1) This Scheme may be cited as the British Waterways Board Transfer Scheme 2012.
(2) It comes into force at the same time as the British Waterways Board (Transfer of Functions) Order 2012.

Interpretation
2. In this Scheme—
“Canal & River Trust” means Canal & River Trust, a company limited by guarantee with company number 07807276 and registered charity number [ ];
[Community Interest Company name] means [ Ltd], a community interest company, a wholly owned subsidiary of Canal & River Trust;
“land” includes any interest in land;
“the transfer date” means the date upon which this Scheme comes into force.
Transfer of property, rights and liabilities to Canal & River Trust

3. Subject to the following provisions of this Scheme, all property, rights and liabilities of the British Waterways Board transfer to Canal & River Trust on the transfer date.

Property, rights and liabilities not transferred

4. The property, rights and liabilities listed in Schedule 1 (which relate to the British Waterways Board’s operation in Scotland) do not transfer.

Property, rights and liabilities transferred to [Community Interest Company]

5. On the transfer date, the property, rights and liabilities listed in Schedule 2 transfer to [Community Interest Company].

Property to be held on charitable trust

6.—(1) On the transfer date, the property listed in Schedule 3 transfers to Canal & River Trust to hold as trustee.

(2) That property is to be held on the charitable trust named the Waterways Infrastructure Trust, settled by the Secretary of State for Environment, Food and Rural Affairs, and established by the Trust Settlement made by the Secretary of State on [date].

(3) A copy of the document establishing the trust is held in the library of the Department for Environment, Food and Rural Affairs.

Registration of land

7.—(1) Within three years of the transfer date, Canal & River Trust must, at its own expense, register all transfers of land to it which are given effect by this Scheme (whether or not to hold as trustee) with the Land Registry in accordance with paragraphs (2) and (3).

(2) Canal & River Trust must register all land which, in accordance with article 6 it holds as trustee, with a restriction on title which has the effect of preventing it from disposing of such land without the prior written consent of the Secretary of State.

(3) Before carrying out such registration, Canal & River Trust must obtain the agreement of the Secretary of State as to the land to which paragraph (2) applies.

(4) Until such time as the registration required by this article takes place, any land which, in accordance with article 6 Canal & River Trust holds as trustee, is to be treated as if a restriction on title were on the Land Register preventing it from disposing of such land without the prior written consent of the Secretary of State.

Documents and records

8. Where Canal & River Trust holds documents, files and other records which have transferred to it under this Scheme which are directly relevant to activities in Scotland after the transfer date (“relevant records”), Canal & River Trust must—

(a) if requested to do so by the British Waterways Board, provide information and assistance to the Board in relation to any relevant records; and

(b) allow the British Waterways Board or any person authorised by it the opportunity to examine relevant records and to take copies.

Consequential and supplementary provisions

9.—(1) Transfers under this Scheme have effect—

(a) irrespective of whether or not they could be transferred otherwise than by this Scheme; and

(b) irrespective of whether consent of a third party would be required if the transfer were effected otherwise than by this Scheme.

(2) This Scheme does not affect the validity of anything done (or having effect as if done) by or in relation to the British Waterways Board before the transfer date.

(3) Anything (including legal proceedings) which, at the transfer date, is in the process of being done by or in relation to the British Waterways Board may be continued by or in relation to—

(a) Canal & River Trust so far as it relates to anything transferred to Canal & River Trust under this Scheme; or

(b) [Community Interest Company], so far as it relates to anything transferred to [Community Interest Company] under this Scheme.
(4) Anything done (or having effect as if done) by or in relation to the British Waterways Board in connection with anything transferred under this Scheme has effect, so far as is necessary for continuing its effect after the transfer date, as if done by or in relation to—
   (a) Canal & River Trust so far as it relates to anything transferred to Canal & River Trust under this Scheme; or
   (b) [Community Interest Company], so far as it relates to anything transferred to [Community Interest Company] under this Scheme.

(5) Any reference to the British Waterways Board or any reference which is to be treated as a reference to the British Waterways Board in an instrument or other document in respect of anything transferred under this Scheme or any function transferred under the British Waterways Board (Transfer of Functions) Order 2012 is to be treated as a reference to—
   (a) Canal & River Trust, so far as it relates to anything transferred to Canal & River Trust under this Scheme (whether or not as trustee), or to a function transferred under [or by virtue of] the British Waterways Board (Transfer of Functions) Order 2012; or
   (b) [Community Interest Company] insofar as it relates to anything transferred to [Community Interest Company] under this Scheme.

Modification of Scheme

10.—(1) This scheme may be modified by the written agreement of the Secretary of State and of—
   (a) Canal & River Trust, insofar as the modification relates to anything transferred to it; or
   (b) [Community Interest Company], insofar as the modification relates to anything transferred to it.

(2) A modification may have effect from the date on which this Scheme comes into effect.

Name
Parliamentary Under Secretary of State

Date
Department for Environment, Food and Rural Affairs

SCHEDULES

SCHEDULE 1

Property, rights and liabilities not transferred (relating to British Waterways Board’s operation in Scotland)

PART 1

Property

1. All land in Scotland.
2. All other tangible assets located in Scotland immediately before the transfer date.
3. All shares held in the following companies—
   (a) Edinburgh Quay Limited;\(^2\) and
   (b) Timber Basin Limited\(^3\)
4. Any documents, files and other records located in Scotland.
5. The following intangible assets—
   (a) trademark numbers 2288381, 2334071, 2334074, 2350974 and 2350975;
   (b) software licences relating to software installed on computers or hardware located within Scotland immediately before the transfer date;
   (c) Commercial capital bank account with XXX; and
6. Bank account XXX

PART 2

Rights and liabilities

\(^2\) Company number SC190454
\(^3\) Company number SC243294.
General

7. All rights and liabilities relating to property which does not transfer under this Scheme.

8. All rights and liabilities relating to staff who do not transfer to Canal & River Trust under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

9. All rights and liabilities under the following contracts—
   (a) Time Charge Orders and Package Orders relating solely to work performed in Scotland made under the Omnibus Construction Contract with May Gurney Limited dated 1 April 2009;
   (b) Work Orders relating solely to work performed in Scotland made under the National Dredging Contract with Land & Water Services Limited dated 1 December 2010;
   (c) Work Orders relating solely to work performed in Scotland made under the Hydro-dynamic Dredging Contract with Land & Water Services Limited dated 1 April 2011; and
   (d) contracts or leases relating solely to equipment located in Scotland made under the Agreement for supply of equipment and services with Canon (UK) Limited dated 11 March 2009.

10. All rights and liabilities under—
   (a) the Edinburgh Quay joint venture agreement; and
   (b) the Timber Basin joint venture agreement.

Cross-border contracts

BSkyB Agreement

11.—(1) The rights and obligations of British Waterways Board under the BSkyB Agreement are allocated between British Waterways Board and Canal & River Trust to create—
   (a) an agreement between British Waterways Board, BSKYB Telecommunications Services Limited and Telent Limited in relation to Scotland; and
   (b) an agreement between Canal & River Trust, BSKYB Telecommunications Services Limited and Telent Limited in relation to England and Wales.

(2) The agreement referred to in paragraph 11(1)(a) will be on the same terms as the BSkyB Agreement except that—
   (a) the following definitions will apply in lieu of those contained in that Agreement—
      "Annual Payment" the fixed annual payment of £825,000 (EIGHT HUNDRED AND TWENTY-FIVE THOUSAND POUNDS)
      "Waterways Network" the towing path and lands adjoining the inland waterways network in Scotland:
      (a) which is at the date of this Agreement; and/or
      (b) which may be at any time in the future, within the legal and beneficial ownership of BWB in fee simple or for a term of years;” and
   (b) any other consequential amendments required to give effect to this Scheme will be deemed incorporated into the agreement.

(3) The agreement referred to in paragraph 11(1)(b) will be on the same terms as the BSkyB Agreement except that—
   (a) all references to British Waterways Board are to be read as a reference to Canal & River Trust; and
   (b) the following definitions will apply in lieu of those contained in the BSkyB Agreement—
      "Annual Payment" the fixed annual payment of £5,675,000 (FIVE MILLION SIX HUNDRED AND SEVENTY-FIVE THOUSAND POUNDS)
      "Waterways Network" the towing path and lands adjoining the inland waterways network in England and Wales:
      (a) which is at the date of this Agreement; and/or
      (b) which may be at any time in the future, within the legal and beneficial ownership of Canal & River Trust in fee simple or for a term of years”; and
   (c) any other consequential amendments required to give effect to this Scheme will be deemed incorporated into the agreement.

4 S.I. 2006/246.
BT Agreement

12.—(1) The rights and obligations of British Waterways Board under the BT Agreement are allocated between British Waterways Board and Canal & River Trust to create—

(a) an agreement between British Waterways Board and British Telecommunications PLC in relation to Scotland; and
(b) an agreement between Canal & River Trust and British Telecommunications PLC in relation to England and Wales.

(2) The agreement referred to in paragraph 12(1)(a) will be on the same terms as the BT Agreement except that—

(a) the annual payment payable by British Telecommunications PLC to the British Waterways Board from the date of the transfer will be an amount calculated in accordance with the review provisions of the agreement, based on an Annual Payment of £37,720 for the year starting on 1 May 2011 and ending on 30 April 2012;
(b) the agreement will relate to land, property and airspace owned and/or managed by British Waterways Board within Scotland only; and
(c) any other consequential amendments required to give effect to this Scheme will be deemed incorporated into the agreement.

(3) The agreement referred to in section 12(1)(b) will be on the same terms as the BT Agreement except that—

(a) all references to British Waterways Board are to be read as a reference to Canal & River Trust;
(b) the Annual Payment payable by British Telecommunications PLC to Canal & River Trust from the date of the transfer will be an amount calculated in accordance with the review provisions of the agreement, based on an Annual Payment of £686,267 for the year starting on 1 May 2011 and ending on 30 April 2012;
(c) the agreement will relate to land, property and airspace owned and/or managed by Canal & River Trust within England and Wales only; and
(d) any other consequential amendments required to give effect to this Scheme will be deemed incorporated into the agreement.

Easynet Agreement

13.—(1) The rights and obligations of British Waterways Board under the Easynet Agreement are allocated between British Waterways Board and Canal & River Trust to create—

(a) an agreement between British Waterways Board and Easynet Telecommunications Limited in relation to services supplied in Scotland; and
(b) an agreement between Canal & River Trust and Easynet Telecommunications Limited in relation to services supplied in England and Wales.

(2) The agreement referred to in paragraph 13(1)(a) is on the same terms as the Easynet Agreement except that—

(a) the charges payable by British Waterways Board from the date of the transfer is the proportion of charges attributable to Services provided in Scotland;
(b) the agreement relates to Services supplied by Easynet Telecommunications Limited within Scotland only;
(c) any other consequential amendments required to give effect to this Scheme are deemed incorporated into the agreement, including changes to the Annexures and Schedules to refer only to networks and sites within Scotland.

(3) The agreement referred to in paragraph 13(1)(b) will be on the same terms as the Easynet Agreement except that—

(a) all references to British Waterways Board are to be read as a reference to Canal & River Trust;
(b) the charges payable by Canal & River Trust from the date of the transfer is the proportion of charges attributable to Services provided in England and Wales;
(c) the agreement relates to Services supplied by Easynet Telecommunications Limited within England and Wales only; and
(d) any other consequential amendments required to give effect to this Scheme will be deemed incorporated into the agreement, including changes to the Annexures and Schedules to refer only to networks and sites within England and Wales.

Nextira One Agreement

14.—(1) The rights and obligations of British Waterways Board under the NextiraOne Agreement are allocated between British Waterways Board and Canal & River Trust to create—

(a) an agreement between British Waterways Board and NextiraOne UK Limited in relation to equipment and services supplied in Scotland; and
(b) an agreement between Canal & River Trust and NextiraOne UK Limited in relation to equipment and services supplied in England and Wales.

(2) The agreement referred to in paragraph 14(1)(a) will be on the same terms as the NextiraOne Agreement except that—
   
   (a) the charges payable by British Waterways Board from the date of the transfer will be the proportion of charges attributable to equipment and services provided in Scotland;
   
   (b) the agreement will relate to Services supplied by NextiraOne UK Limited within Scotland only; and
   
   (c) any other consequential amendments required to give effect to this Scheme will be deemed incorporated into the agreement, including changes to the Annexures and Schedules to refer only to lines and sites within Scotland.

(3) The agreement referred to in paragraph 14(1)(b) will be on the same terms as the NextiraOne Agreement except that—

   (a) all references to British Waterways Board are to be read as a reference to Canal & River Trust;
   
   (b) the charges payable by Canal & River Trust from the date of the transfer is the proportion of charges attributable to Services provided in England and Wales;
   
   (c) the agreement relates to equipment and services supplied by NextiraOne UK Limited within England and Wales only; and
   
   (d) any other consequential amendments required to give effect to this Scheme will be deemed incorporated into the agreement, including changes to the Annexures and Schedules to refer only to lines and sites within England and Wales.

15. In this Schedule—

   “BSkyB Agreement” means the agreement between British Waterways Board, Fibreway Limited company number 67307 (which has changed its name to BSKYB Telecommunications Services Limited) and Marconi Corporation PLC company number 67307 (which has changed its name to Telent Limited) relating to underground telecommunications equipment dated 9 May 2006;

   “BT Agreement” means the agreement between British Waterways Board and British Telecommunications relating to telecommunications equipment dated 21 July 1995, as amended by a supplementary agreement dated 22 December 2000;

   “Easynet Agreement” means the Ethernet anywhere solution service agreement between British Waterways Board and Easynet Telecommunications Limited company number 2883980 (which has changed its name to BSKYB Telecommunications Services Limited) dated 24 February 2005;

   “NextiraOne Agreement” means the Framework Agreement for telecommunications equipment and services between British Waterways Board and NextiraOne UK Limited company number 4036009 dated 26 May 2005, as varied by a letter of agreement dated 4 March 2010.

SCHEDULE 2

Property, rights and liabilities transferred to [Community Interest Company]

Property

1. Land with the following land registry title numbers—

   (a) AGL162344;
   
   (b) AGL162321;
   
   (c) EGL323708;
   
   (d) BM302035;
   
   (e) BK313735;
   
   (f) AGL8674;
   
   (g) GM944106;
   
   (h) CH553750;
   
   (i) CH555409;
   
   (j) HD510726;
   
   (k) LL113568;
   
   (l) ON292027;
   
   (m) SYK138785;
   
   (n) SYK138786;
   
   (o) SYK138789;
   
   (p) SYK222548;
2. All shares and memberships held in the following companies and partnerships—
   (a) Small Hydro Company Ltd;
   (b) ISIS Waterside Regeneration Limited Partnership;
   (c) ISIS Waterside Regeneration (General Partner) Ltd;
   (d) Paddington Basin Business Barges Ltd;
   (e) H20 Urban Ltd;
   (f) H2O Urban (No.2) LLP;
   (g) City Road Basin Ltd;
   (h) Waterside Pub Partnership LLP.

Rights and liabilities

3. All rights and liabilities relating to property which transfers to [Community Interest Company].

SCHEDULE 3

Property to be held on charitable trust

1. All land and infrastructure which is necessary to—
   (a) inland navigation on a waterway; or
   (b) public access to, and use of, a towpath.

2. Paragraph 1 includes, in particular—
   (a) the navigation channel of a waterway extending to the rear of the towpath waterway wall and the
       rear of the offside waterway wall, where one exists.
   (b) towpath (including any bridge over which it passes) extending to either—
       (i) the rear of the boundary hedge or other boundary structure; or
       (ii) in the absence of a defined boundary, to a width of three metres measured from the edge of the
           navigation channel;
   (c) locks including side ponds, by-weirs, spillways and adjoining land required to ensure safe operation
       of the lock;
   (d) reservoir feeders to the rear of the feeder wall on both sides;
   (e) reservoirs to the maximum high water mark, head banks, dams and spillways;
   (f) other structures, equipment or features necessary to the operation of the waterway including, in
       particular—
       (i) weirs,
       (ii) sluices,
       (iii) culverts,
       (iv) drainage channels,
       (v) winding holes,
       (vi) pumping stations,
       (vii) boat lifts; and
       (viii) land or structures supporting any such structures, equipment or features.
   (g) access roads and paths including rights of access and similar easements;
   (h) land and structures necessary for the support or protection of the navigation channel or towpath
       including in particular—
       (i) embankments,
       (ii) cuttings,
       (iii) retaining walls,
       (iv) tunnels, and
       (v) aqueducts.

3. Land or infrastructure is not excluded from paragraph 1 by reason of it being derelict or disused, if there
   is a realistic prospect of its restoration in the long term.
EXPLANATORY NOTE
(This note is not part of the Scheme)

This Transfer Scheme is made to transfer the property, rights and liabilities of the British Waterways Board in England and Wales to a charity, Canal & River Trust. It is made in connection with the British Waterways Board (Transfer of Functions) Order which transfers statutory functions from the British Waterways Board to Canal & River Trust.

Article 3 is a default provision which provides that, except where provided for elsewhere in the Scheme, all property rights and liabilities of the British Waterways Board transfer to Canal & River Trust.

Article 4 introduces Schedule 1, which lists the property, rights and liabilities which remain with British Waterways Board, which relate to the Board’s operation in Scotland.

Article 5 introduces Schedule 2, which lists the property, rights and liabilities which transfer to Canal & River Trust’s subsidiary community interest company.

Article 6 introduces Schedule 3, which lists property which Canal & River Trust is to hold as trustee, under a separately created charitable trust settled by the Secretary of State for Environment, Food and Rural Affairs. A separate arrangement is in place to require Canal & River Trust to manage the other property which is transferred to it to hold in its own right under this Scheme consistently with a list of specified purposes.

Article 7 imposes obligations on Canal & River Trust to register the land transferred to it under this Scheme with the Land Registry. Registration will need to distinguish between the land which Canal & River Trust holds in its own right, and the land which it holds on the charitable trust.

Canal & River Trust

Proposed Arrangements Concerning the Protector
to be included in a Schedule to the Grant Funding Agreement

1. Definitions

1.1 Annual Investment Plan
The plan to be prepared by CRT and to be provided to the Protector at the commencement of each financial year of CRT.

1.2 Canal & River Trust or ‘CRT’
Canal & River Trust, a company limited by guarantee and with charitable objects; registered in England & Wales under number 7807276.

1.3 Investment Assets
Assets transferred to CRT under the Transfer Scheme whose primary purposes are to provide a long term revenue flow to enable CRT to operate the Infrastructure Trust in perpetuity.

1.4 Infrastructure Trust
The “Waterways Infrastructure Trust”, a separate permanent endowment charitable trust of waterway infrastructure transferred under the Transfer Scheme to CRT to be held by it as the sole Corporate Trustee of such trust.

1.5 Material Diminution
A diminution in the value of Investment Assets (other than due to reasonably unavoidable fluctuations in market value) which is sufficiently severe to materially impair the capability of CRT to discharge its duties as an effective steward and trustee of the Infrastructure Trust in the short or long term.

1.6 Material Diversion
A material diversion of Protected Assets to purposes other than the purposes set out in the Statement of Agreed Purposes.

1.7 Medium-term Investment Strategy
A strategy to be prepared by CRT being its medium term strategy for the management of the Investment Assets.

1.8 Protected Operational Assets
Assets comprising non-infrastructure operational property not forming part of the Infrastructure Trust together with other assets which in either case are transferred to CRT under the Transfer Scheme.

1.9 Protected Assets
The Investment Assets and the Protected Operational Assets to be transferred outright to CRT to be held as Beneficial Owner.

1.10 Protector
The person to be appointed to monitor compliance by CRT with these arrangements with a view to ensuring there is no Material Diminution or Material Diversion.

1.10 Agreed Purposes
The purposes to which the Protected Assets as a whole are to be put (as set out in a Statement of Agreed Purposes which may be revised by agreement of the parties from time to time).5

1.11 Secretary of State
Secretary of State for Environment Food and Rural Affairs

1.12 Transfer Scheme
The British Waterways Board Transfer Scheme 2012

5 The proposed Statement of Agreed Purposes is currently being drawn up by CRT and Defra.
2. Recitals

(A) CRT has been appointed as Trustee of the Infrastructure Trust pursuant to the Trust Settlement made in accordance with the terms of the Transfer Scheme. The Protected Assets have been transferred to CRT as beneficial owner with the intent that it has flexible powers of management to use them optimally to meet the Agreed Purposes.

(B) Under this Grant Funding Agreement Secretary of State has agreed to fund CRT to help it discharge its duties as Trustee of the Infrastructure Trust for a limited period.

(C) Secretary of State desires so far as possible (but without stipulating any purposes or particular purposes within the meaning of s.121 Charities 2011) that the Protected Assets be used by CRT to meet the Agreed Purposes without any Material Diminution or Material Diversion.

(D) The parties have agreed to establish the Protector arrangements in order to monitor management by CRT of the Protected Assets and so that the Secretary of State may be alerted to any need to exercise the remedies provided by the arrangements.

3. Undertakings by Canal & River Trust

3.1 CRT undertakes to the Secretary of State to use the Protected Assets for the Agreed Purposes without any Material Diversion of those assets.

3.2 CRT undertakes to the Secretary of State to use all its endeavours to ensure that there is no Material Diminution in the value of the Investment Assets.

4. Medium-term Investment Strategy

4.1 CRT shall within three months of the appointment of the first Protector prepare a Medium Term Investment Strategy for the Investment Assets in consultation with the Protector and the Protector will report to the Secretary of State as to whether the Medium-term Investment Strategy is in compliance with the Agreed Purposes.

4.2 CRT will undertake to review the Medium-term Investment Strategy regularly in consultation with the Protector and the Protector shall report any material changes to the Secretary of State and whether the Medium-term Investment Strategy remains in compliance with the Agreed Purposes.

5. Annual Investment Plan

CRT will prepare the Annual Investment Plan for the Investment Assets which it will deliver to the Protector for information within three months of the date of the appointment of the Protector and annually thereafter.

6. Protected Operational Assets

6.1 Protected Operational Assets shall include

6.1.1 property (including offices, workshops, depots etc) that may be conveniently used to facilitate the effective management and operation of waterway infrastructure comprising the Infrastructure Trust but which do not themselves form part of the Infrastructure Trust; and

6.1.2 other property or assets of historical, architectural, engineering, amenity or environmental value or merit that, in accordance with its charitable objects (but not otherwise) CRT considers desirable to hold or retain for their preservation, protection or convenience of use without the need to provide an investment return to CRT

6.2 CRT shall report to the Protector any event or circumstance whereby property comprising Protected Operational Assets ceases to be required for the purposes in 7.1 above and shall advise the Protector of proposals to dispose of the same or to treat the same thenceforth as Investment Assets.

7. Role and Powers of the Protector

7.1 The Protector shall be appointed jointly by the Secretary of State and CRT. In default of agreement the Protector shall be appointed by the President (or equivalent post) of a Professional Body representing skilled practitioners in the relevant field of practice.

7.2 The Protector shall be appointed for a term of up to 5 years which may be renewable but no Protector shall serve for more than 10 years.

7.3 The Protector shall be a person standing as a practitioner, regulator or adviser in the field of investment practice for the predominate class of assets in the Investment Assets.

7.4 The costs and expenses of the Protector are payable jointly by CRT and the Secretary of State.

8. Role of Protector

8.1 The Protector shall monitor management by CRT of the Protected Assets in order to detect any actual or threatened Material Diversion.
8.2 The Protector shall monitor management by CRT of the Investment Assets in order to detect any actual or threatened Material Diminution.

8.3 The Protector shall further

8.3.1 receive the Annual Investment Plan annually and provide comments on it to CRT as considered appropriate;

8.3.2 provides feedback to CRT in connection with any review or revision by CRT of the Medium-term Investment Strategy;

8.3.3 report to the Secretary of State on the continued conformity of the Medium-term Investment Strategy with the Agreed Purposes; and

8.3.4 report annually to Secretary of State on the management by CRT of the Investment Assets by reference to its performance against the Medium-term Investment Strategy.

8.4 The Protector shall be entitled to receive the Minutes of the Investment Committee of the Board of CRT (and Minutes of meetings of the board of CRT’s subsidiary Community Interest Company) and also to request all such reports and information as the Protector requires to fulfil his or her role.

9. Powers of the Protector

9.1 ‘Amber’ warning. The Protector may issue a formal expression of concern at any time. This will be triggered if the Protector is concerned that there is a substantial risk of a Material Diminution or a Material Diversion.

9.2 On issue of an ‘Amber’ Warning the Board of CRT must consider the Protector’s concerns in good faith and advise the Protector of what steps it has taken to address those concerns.

9.3 ‘Double amber’ warning. If the Protector is concerned that the threatened or actual Material Diminution or Material Diversion identified in the ‘Amber’ Warning remains inadequately addressed, the Protector may issue a ‘Double Amber’ warning. The Protector shall then have the right to require the Board and separately the Council of CRT to hear his concerns within one month of his request.

9.4 The Board of CRT shall agree a plan with the Protector to address his concerns within two months of the date of the ‘Double Amber’ warning.

9.5 The Protector will notify Secretary of State of his or her concern.

9.6 ‘Red’ Non-compliance Notice. If the Protector considers that the action plan has not been implemented to a sufficient degree, or that in his reasonable opinion the risk of a Material Diminution or Material Diversion remains or if an Material Diminution or Material Diversion has occurred, he can issue a ‘Red’ Non-compliance Notice.

9.7 The Protector will notify the Secretary of State of grounds for the issue of the ‘Red’ Non-compliance Notice and the Secretary of State shall take these into account in deciding whether or not, and if so to what extent, to exercise remedies available under this Grant Funding Agreement or the Infrastructure Trust Settlement or both, or its Special Powers under CRT’s Articles of Association.

10. Powers of the Secretary of State

10.1 Upon the issue of a ‘Red’ Non-compliance Notice by the Protector the Secretary of State may do any one or more of the following:

10.1.1 conditionally withhold payment of some or all of grant funding due to be paid under the Grant Funding Agreement pending fulfilment of those conditions;

10.1.2 permanently withhold payment of some or all of grant funding due to be paid under the Grant Funding Agreement for a specified period;

10.1.3 terminate this Grant Funding Agreement;

10.1.4 exercise any remedy available under the Trust Settlement;

10.1.5 exercise any powers available as a ‘B’ member of CRT.6

10.2 In taking any of the actions in 10.1 the Secretary of State shall act reasonably and shall seek to ensure the actions taken are proportionate to the nature or scale (or both) of the default or defaults specified in the ‘Red’ non-compliance Notice requiring remedy.

March 2012

6 The Secretary of State’s proposed powers as a ‘B’ member of CRT include, but are not limited to, replacement of some or all of the CRT Trustees.
Supplementary written evidence submitted by David DeVere

1. I am a builder and a lawyer with experience of water law and river law in particular.

2. These submissions are made after having examined the Public Bodies Bill (reference number HC 188) on the parliamentary website.

3. The paragraph after the word “NOTE” (commencing about line 5 on page 22 of the Bill) provides that:
   Section 22(2)(a) does not apply to an order under section 5 which provides for:
   (a) functions of the British Waterways Board falling within section 22(3)(b) to (e) to be transferred to another person; and
   (b) functions of the Environment Agency falling within section 22(3)(b) to (e) to be transferred to a person to whom functions of the British Waterways Board are transferred by virtue of paragraph (a).

4. This is an Ouster Clause (“the Clause”). The Clause has been inserted in the Bill to exclude the jurisdiction of the courts and the public in matters to do with other provisions set out in this Bill having to do with the future exercise of the section 22(3) excluded functions.

5. In 2004, in pleadings set before the High Court in a matter of judicial review, the BWB submitted that, as a body of trustees, the BWB was not a body having any public function. The BWB, it was submitted, was completely immune from the supervisory jurisdiction of the High Court in any claim made for the judicial review of any decision taken by any of the officers of the BWB.

6. The Clause seeks to permit the transfer, by a section 5 Order, of the functions set out at subsections 22(3)(b) to 22(3)(e) (“the excluded functions”) to the successor body to the BWB.

7. Should the successor body to the BWB not have any public functions then that successor body would be entitled to exercise the excluded functions with out any supervision from either the judiciary or the public.

8. That supervision includes both judicial review and other supervisory powers found in the public access and the freedom of information legislation.

9. It may be submitted by the BWB that the successor body to the BWB will be a charity and will necessarily be a body that is always exercising public functions. The BWB may submit that the public need have no concern in this regard. But the successor body may not take the form of a charitable body.

10. The successor body to the BWB may take the form of a company limited by guarantee, a community interest company, a body of trustees or an unincorporated body of persons.

11. Each of these bodies clearly falls within the meaning of an “eligible person” seen at section 1(3) of the Bill. Yet these bodies do not necessarily need to have any public function.

12. With the inclusion of the Clause in this Bill the successor to the BWB, not being a charity or a body having public functions, may then succeed to the excluded functions and be entirely immune from judicial and public supervision.

13. The excluded functions are really functions that ought to exercised by a body having public functions and subject to both judicial and public supervision.

14. As the Bill stands the Clause ousts the jurisdiction of the public and the courts to guard against the misuse of those important excluded functions.

15. With the Clause in place the successor body to the BWB could simply plead that it is not exercising a public function and that no claim can lie against it for the behaviour of its officers.

16. I make these submissions in the hope that the Clause will be removed and that any successor body to the BWB will remain subject to judicial and public supervision. At present the BWB has made it abundantly clear that it considers that it is not subject to any claim in judicial review. The present BWB have made this clear in earlier pleadings in 2004 before the High Court. I was a party to those proceedings.

17. I respectfully ask that the Committee note my concerns.

I believe the facts stated in these submissions are true.

September 2011
Written evidence submitted by Alan Richards

1. SUMMARY

2. BW’s waterways are in a parlous state. Instead of eliminating a backlog of maintenance (ie getting the network to “steady state”) by 2012 which was its stated intention, BW now has a rapidly growing backlog of perhaps a third of a billion pounds. This backlog is greater now than when Tony Hales and Robin Evans took office.

3. Based on its own measure of public benefit (a doubling of visitor numbers by 2012) BW has failed to provide significant improvement over the last ten years. Worse still, it has attempted hide this failure.

4. Contrary to the claim made by Robin Evans that BW is “slightly ahead”, BW has also failed commercially under his stewardship as evidenced by failure to be largely independent of government grant.

5. Although BW has a policy of openness and accountability, it is a secretive organisation which refuses to be held to account. One manifestation of this is its attitude towards its obligations under the Freedom of Information Act.

6. A measure of the public view of BW’s current governance may be taken from a snap poll held by the “e-zine”, Narrowboatworld, who asked last December the simple question “Should Evans, Hales & Co remain in office when British Waterways becomes Canal & River Trust?” Over a period of a few days some 3,742 voted they should go and with only 83 voting for them to remain in office.

7. For the Canal & River Trust (CART) to be successful, it must have good governance and adequate funding. For many years, British Waterways has had neither. Poor governance has led to poor funding and the complete failure of British Waterways’ “2012 Vision”. The government settlement (together with the projected extra income by virtue of being a charity) is simply insufficient to halt this decline much less reverse it.

8. Unfortunately, the move to charitable status retains rather than replaces those responsible for BW’s failure. Worse still, the move to charitable status has been engineered and is controlled by those same people. As such CART is viewed by many as simply the “emperors new clothes”, “BW MkII” or “BW (Charity Edition)”.

9. INTRODUCTION

10. I am Allan Richards, a retired IT consultant and lifelong waterways enthusiast. For over 50 years, I have walked, cycled, fished and boated around the UK’s waterways often with my family. I also have an interest in the historical, heritage and conservation aspects of the waterways and write on waterways related matters.

11. I am a member of three waterways related organisations but hold no national office. This memorandum does not represent the views of any organisation of which I am a member.

12. As with thousands of others, I am already a waterways volunteer. In particular, for the last seven years I have been a volunteer helmsman (and lately boat manager) on a community boat project which gives groups of disadvantaged children a canal experience and holiday. (Disadvantaged, in this context can mean just about anything—young carers, social problems, learning difficulties etc.)

13. My boating experience on inland waterways includes both powered and unpowered craft. It takes in hire boats and shared ownership as well as private craft. I have also worked part time within the inland waterways trade.

14. The family currently owns a 47’ narrowboat with moorings a few minutes from my home which is used year round for both day trips and cruises lasting several weeks.

15. FACTUAL INFORMATION

16. This memorandum seeks to provide some of the evidence that the committee had difficulty obtaining from Robin Evans, Tony Hales and John Kittmer on the morning of Tuesday 13 March 2012. In particular, it documents BW’s 10 year old “2012 vision” which the three had some difficulty in remembering. It also corrects some of the very misleading answers provided by Mr Hales and Mr Evans by documenting BW’s three long term targets set for achieving that vision.

17. As some of the information provided in this section was obtained using the Freedom of Information Act (FOIA) and bearing in mind that CART will not be fully subject to the Act, it might be relevant to bring the committees attention to BW’s deplorable record in this area.

18. In the first three months of 2012, it is recorded on the Information Commissioners’ website that some seven decision notices have been issued citing BW as having committed 21 breeches of FOIA. Six of those decision notices required BW to take remedial action.

19. By way of example, mention was made on the 13th by Tony Hales that meetings of the transition trustees were already published. This is true. However, a FOIA request was made that they be provided on 2 September 2011 and they were not made available until over six months later (on 22 February) following no less than...
three complaints to the Information Commissioners Office, several informal interventions and a decision notice requiring BW to take remedial action.

20. Even now, BW maintains that it does not hold copies of reports written by its directors for those meetings!

21. This memorandum will now consider BW’s “2012 vision” and BW’s achievements (or rather lack of them) over the last ten years or so. The term “2012 vision” is used as 2012 is the year when delivery of the vision should have been achieved.

22. Taken from BW’s website, BW’s 2012 vision reads as follows “Our ambition is that by 2012 we will have created an expanded, vibrant, largely self-sufficient waterway network used by twice as many people as in 2002. It will be regarded as one of the nation’s most important and valued national assets. Visitors will be delighted with the quality of their experience and as a consequence many will become active participants.” This vision can be traced back to 2003 and is found reproduced in BW’s Annual Reports.

23. For the record, Defra’s expectations of BW are recorded in BW’s 2007–08 annual report which reads “In England and Wales during this year we have benefited from our discussions with the new Minister for Inland Waterways, Jonathan Shaw, and his team of officials to develop together a ‘strategic steer’ which helps us to interpret and prioritise actions to meet Defra’s expectations. The strategic steer sets out three priorities in order of importance: (1) Maintaining the waterway network in satisfactory order: (2) Achieving the shared Government/British Waterways longer term vision of moving towards greater self-sufficiency. (3) Delivering a range of additional public benefits”. It should be noted that Defra considered that BW’s primary role was that of a navigation authority.

24. Robin Evans replaced the well regarded David Fletcher (a boat owner of many years standing) as chief executive in December 2002 at a time when BW were making significant inroads in reducing its historic backlog of maintenance. Indeed, BW’s 2002–03 Annual Report states “We have set ourselves the challenge of eliminating the remaining bulk of maintenance arrears by December 2012, and are on track to do this…”.  

25. It is surprising, therefore, that Tony Hales recollection is completely different. “Q16 Barry Gardiner: Mr Hales, this has been a long time coming. Let us go back to your projections in 2002. Can you tell the Committee what your stated aim in 2002 was for 2012, the year we are now in? Tony Hales: I will be helped by my Chief Executive, but I believe one of the key things that we said in 2002 was that we did have a target on major assets: to have D and E asset classifications reduced to 15%. ” Mr Hales response is certainly untrue and completely misleading. Not only was he not appointed as chairman until 10 July 2005 (his second term of office expired in July last year) but BW’s 2002–03 Annual Report shows that condition of assets were categorised in a completely different manner! Quite simply, Mr Hales misled the committee as the 2002–03 Annual Report shows.

26. The 2002–03 Annual Report also states that, as of March 2003, the backlog of maintenance arrears stood at £187 million. The question naturally arises as to whether BW will meet its target (or challenge) of eliminating the bulk of these by December 2012.

27. Certainly for a few years after 2002–03 Annual Reports were recording that this historic backlog was falling. However, in retrospect, it seems that new arrears were being accrued at the same time so whilst BW was reporting good progress, in reality, none was being made.

28. The committee will probably be aware of the Status Options review carried out by KPMG in 2007–08 (at a cost to the public of at least £350,000 and possibly £600,000). In a briefing document prepared for that review, dated 1 May 2007, it was stated by BW that its maintenance backlog was now £200 million. Furthermore, the briefing document states that a funding gap existed of some £25 million.

29. Whilst a link exists between funding gap and maintenance backlog, it is difficult to say categorically that a £25 million under spend causes a £25 million rise in backlog. The rise in backlog may be higher or lower for a number of complex reasons. However, in the absence of figures from BW or Defra, making that assumption does give a “ball park” indication of maintenance arrears.

30. One of the highlights of the KPMG report, often quoted by BW at the time was “We estimate there is a funding gap in England and Wales of at least £29 million per annum ….”.

31. In its financial year 2010–11, BW set two of its executive directors a bonus earning task of updating its Steady State Model. An internal report was produced in March 2011. A memorandum from the All Party Parliamentary Group on Waterways (APPWG) titled “The Future of The Waterways” produced in July 2011 states “The British Waterways estimated gap of £39 million is based on receipt of the current £47 million in government grant in 2010–11, compared to the £39 million proposed by government for the contract it will have with the New Waterways Charity”. The actual figures given in that memorandum were provided by BW’s chief executive, Robin Evans and one must assume that they were based on BW’s latest iteration of its model.

32. It will be noted that the funding gap has risen over a few years from £25 million to £39 million. This is very much in line with the findings of the KPMG report which documents a variety of scenarios all suggesting that the funding gap will rise over time.
33. Taking into account BW’s declared backlog of £200 million in 2007 and its rising funding gap, a crude estimate is that, instead of maintenance backlog being largely eliminated in 2012 as predicted in the 2002–03 Annual Report, it is in the region of a third of a billion pounds.

34. As an aside, in the certain knowledge that a massive backlog of maintenance was accumulating, a FOIA request to Defra was made a year ago (in March 2011) asking what BW’s current maintenance arrears were. Despite being BW’s sponsoring body, Defra claimed they did not hold this information (or even that they needed to know it!).

35. In case the committee still have some difficulty in understanding that under Evans and Hales the general condition of waterways in their charge has actually deteriorated significantly (as measured by maintenance backlog), reference should be made to the waterways condition survey carried out by the National Association of Boat Owners (NABO) which found them to be in a “parlous state”. This can be found on the NABO website.

36. Having documented BW’s failure to achieve its target (or challenge) regarding maintenance backlog, consideration is now given to two long-term targets which BW set for its chief executive. As will be seen these are directly related to BW’s 2012 vision and were not mentioned when Mr Hales and Mr Evans gave evidence.

37. However, before that another misleading answer to a question needs to be documented “Q20 Barry Gardiner: Indeed. What you are telling me is that, despite the fact that your income is slightly above what you projected in 2002–03, you have not yet moved the waterways to the point that you decided you would have them at by 2012, namely largely self-sufficient and in a steady state. Robin Evans: I am afraid I do not think that was part of our vision statement. What we had agreed with Government in 2002 was that there would be only 12% of our big infrastructure assets—the aqueducts, bridges and reservoirs—in the poorest condition grade. That 12%, was the agreed target that Government and British Waterways had in 2002. That changed in 2007 to a holding state of 22% in the poorest asset grades, because Government accepted that the funding was not sufficient for us to move down towards that 12% target. The current target is 22% of assets in the poorest two condition grades”.

38. It would seem that Mr Evans was seeking to deny that the 2002–03 Annual Report says quite categorically that it was BW’s aim to eliminate the bulk of maintenance arrears (ie achieve steady state) by 2012. He was also seeking to deny that it was part of BW’s 2012 vision to become largely self-sufficient by the same date.

39. Whether Mr Evans was deliberately trying to mislead the committee (as with Mr Hales) is a matter for the committee to decide. What can be stated quite categorically is that Robin Evans was set yearly targets self-sufficiency targets in line with BW’s 2012 vision.


41. Suffice to say, the chief executive has missed every one of these targets to date. To take the last year for which figures exist (2010–11) as an example Robin Evans told APPWG that, on a grant of £47 million, he was still £39 million short of the amount needed simply to prevent the waterways deteriorating from the previous year. In effect, he was saying that BW needed a grant of £86 million (£47 million + £39 million) rather than the £45.3 million target he was set. Bearing in mind BW’s third of a billion maintenance backlog this is a failure of spectacular proportions and one has to question BW’s financial competence.

42. Finally, this memorandum considers the 2012 vision in respect of public benefit and, in particular, BW’s stated aim of increasing this by doubling visitor numbers (as set out in its “2012 vision”). In addition to yearly targets based on reduction of dependence on government grant, BW set its chief executive yearly targets to incrementally double visitor numbers from 3.6 million in 2003–04 to 7.2 million in 2011–12.

43. By way of explanation, a rolling telephone survey is carried out which determines visitors over the previous two weeks to BW’s waterways. The measure is “annual average fortnightly visitors”. The targets set were 2003–04—3.6 million, 2004–05—3.7 million, 2005–06—4.0 million, 2006–07—4.5 million, 2007–08—5.0 million, 2008–09—5.7 million, 2009–10—6.5 million, 2010–11—6.9 million, 2011–12—7.2 million.

44. Again, the chief executive missed every one of the targets set for him. Indeed, in many years he did not even achieve the baseline figure of 3.6 million! The last annual report (2010–11) shows achievement of just 3.8 million against his target set for that year of 6.9 million. Surprisingly, the annual report shows the target as 3.5 million which is again below the baseline figure. It would appear that BW has simply revised his target down such that it looks like the chief executive has exceeded it!

45. To the best of the writers knowledge the corporate objective to achieve “steady state” by eliminating the bulk of the 2002 maintenance backlog by 2012 and the two targets set for its chief executive (reduction of grant dependence and public benefit) represent the sum total of BW’s long-term objectives in pursuit of its 2012 vision. BW has failed dramatically and attempted to hide its failure.
46. RECOMMENDATIONS

47. It is recommended that those responsible for BW’s failings (and for misleading both government and public) are held to account.

48. It is also recommended that an independent review is carried out to determine what action is needed (in terms of governance and funding) to remedy the situation. (It is understood that APPWG has also suggested a similar course of action but restricted to funding).

May 2012

Additional written evidence submitted by Alan Richards

SUMMARY

1. This document provides supplementary evidence to that already provided to the committee.

2. This “new” evidence is provided in response to the letter sent by the committee’s chair to the Rt Hon Caroline Spelman, Secretary of State for Environment, Food and Rural Affairs dated 19 April which was not available when the earlier evidence was provided.

3. It should be noted that whilst the funding agreement for the new trust is in place the public has no knowledge of Canal & River Trust’s (CART) financial plans for the next 15 years.

4. The main purpose of this evidence is to draw the committee’s attention to assets which will be lost for public benefit on transfer.

5. The pension deficit does not “remain at some £65 million” as suggested in the letter. It is at least £124 million and has been estimated to rise to about £150 million on the original April vesting date for the charity.

6. British Waterways almost certainly does not have property assets of £460 million. The last recorded figure was £380 million (2010–11 annual report). It is possible, however, that the £460 is a figure agreed between BW and Defra to represent the total value of BW’s assets including property which will be transferred to CART.

7. CART’s asset base will be severely diminished, if the transfer takes place, with £30 million being given to BW Scotland as its “share” of the assets transferred.

8. It will be further diminished with £125 million of assets (the “some” referred to in Mr Hales letter!) handed over to pension fund partnership (PFP) to provide income for the pension fund and, with the help of the £25 million from government, cancel the £150 million deficit.

9. In short, over one third of the £460 million asset base, some £155 million, will be lost to public benefit should the transfer take place. This is unacceptable.

10. The committee’s letter rightly points out that BW’s estimates are over optimistic. However, providing a more cautious projection does not improve our waterways! The simple fact is that CART needs to demonstrate that it can spend at or above “steady state” from “year 1” otherwise our waterways will continue to deteriorate. They have been doing so since 2004!

INTRODUCTION

11. I am Allan Richards, a retired IT consultant and lifelong waterways enthusiast. For over 50 years, I have walked, cycled, fished and boated around the UK’s waterways often with my family. I also have an interest in the historical, heritage and conservation aspects of the waterways and write on waterways related matters.

12. I am a member of three waterways related organisations but hold no national office. This memorandum does not represent the views of any organisation of which I am a member.

13. As with thousands of others, I am already a waterways volunteer. In particular, for the last seven years I have been a volunteer helmsman (and lately boat manager) on a community boat project which gives groups of disadvantaged children a canal experience and holiday. (Disadvantaged, in this context can mean just about anything—young carers, social problems, learning difficulties etc.)

14. My boating experience on inland waterways includes both powered and unpowered craft. It takes in hire boats and shared ownership as well as private craft. I have also worked part time within the inland waterways trade.

15. The family currently owns a 47’ narrowboat with moorings a few minutes from my home which is used year round for both day trips and cruises lasting several weeks.

FACTUAL INFORMATION

16. Section 3 of the committee’s letter to Caroline Spelman states “Despite measures to minimise it, the pension fund deficit remains at £65 million”. This is untrue. It has grown dramatically.
17. A report (obtained under the Freedom of Information Act and now in the public domain) states quite categorically that the 2010 figure of £65 million has risen to £124 million and will continue to grow. The report suggests that the deficit will be around £150 million on the original April 2012 vesting day.

18. The report, dated November 2011, was written by Philip Ridal, BW’s finance director and presented to the transition trustees at a board meeting on the 24th of that month.

19. Turning to the Pension Fund Partnership (PFP) scheme to provide income, there is a marked difference between the way it has been described to the committee by Mr Hales and the way it has been described to pension fund members.

20. The committee’s concern is about loss of assets should CART be unable to pay off the deficit. However, pension fund members have been told that £125m of assets are to become the property of the “Pension Fund” to pay off the deficit immediately with CART having an option to buy back after 19 years.

21. This is confirmed by minutes of a CART Trustee meeting held in January this year (again obtained under the FOIA) “Mr Ridal tabled a paper prepared by Barnett Waddingham, assessing the funding position of the BW Pension Scheme ahead of discussions with its trustees concerning future funding proposals. The impact of commitments previously made to the trustees of the BW Pension Scheme, notably the one-off payment of £25 million from Defra and the Property Fund Partnership (PFP) payment (£125 million), was noted. Proposals that CRT pay yields of 4.0% or 4.5% on the PFP fund were discussed and it was agreed that management be mandated to offer an income stream into the PFP of 4.0% (with a separate discretion to also deal with a minor technical concession in the short term). This proposal was agreed.”

22. At the same meeting, Mr Ridal also confirmed the PFP arrangement was a pre-condition for the Government agreeing to provide a guarantee.

23. Barrie Milsom, a “pensioner elected” trustee has provided pension fund members with the following description of pension fund arrangements under CART.

24. £25 million cash contribution, which would immediately improve the deficit position which is currently in excess of £100 million (as stated above the deficit is projected to be £150 million and does not “remain at £65 million”).

25. £125 million guarantee by government in case of default. This was described as a “last resort” only to be used only when all the assets of Canal & River Trust have been exhausted.

26. Property Funding Partnership to cover £125 million of the deficit and which will yield 4% or £5 million pa for the pension fund (guaranteed for 19 years). The property funding partnership will run for 19 years and at the end of this period, the Canal & River Trust will have the option of purchasing the properties back from the pension fund, or entering into another agreement. The properties concerned are Wood Wharf and Paddington Basin.

27. It will be noted that Mr Milsom’s description differs somewhat and is more expansive than that given by Mr Hales to the committee! Mr Milsom is confirming that £125 million of assets will be transferred to the pension fund partnership to cover the deficit with CART enjoying any revenue from those assets for 19 years whilst guaranteeing a contribution to the pension fund of £5 million pa over the same period.

28. It will be noted that the £25 million being provided by government plus the £125 million of property assets wipes out the projected £150 million pension fund deficit.

29. For what it is worth, I accept Mr Milsom’s version rather than Mr Hales with the proviso that the asset might be shared, with the pension fund owning a fixed £125 million share. In other words CART might enjoy any 19 year growth in the value of the asset.

30. However, plainly put, CART’s asset base will immediately be diminished by £125 million to resolve BW’s pension fund crisis!

31. It is also of note that a disaggregation committee has been meeting to determine the split of BW’s assets between CART and BW (Scotland). The committee has determined that Scotland’s share of BW’s asset base is some £30 million. It would appear that the committee has not been made aware of this.

Recommendations

32. That the transfer be put “on hold” until such time as a sustainable funding model (ie a funding model that spends at or above steady state from year 1) can be demonstrated to the committee.

33. That a regulator be appointed to set mooring and license charges for boaters if the transfer proceeds.

May 2012
Written evidence submitted by The Commercial Boat Operators Association (CBOA)

The Commercial Boat Operators Association (CBOA) is the trade organisation for the inland waterways freight industry. We have nearly 100 members, including associates. Our members operate craft with carrying capacity between 2,700 tonnes and 25 tonnes on the tidal estuaries and the canals and rivers linked to them.

The CBOA welcomes the transfer of British Waterways canals and rivers to the newly established Canal & River Trust (CRT). We recognise that the current funding model needed to be revised and very much hope that a move in to a civil society will secure the long term financial sustainability of the waterways.

The CBOA’s primary focus is on the carriage of freight on the inland waterways network. Much of this network will be transferred to CRT including all of the waterways (within England) designated by the 1968 Transport Act as those waterways that are principally available for the commercial carriage of freight. Such waterways are specifically designated as “commercial waterways”.

We were disappointed that the government’s response to the consultation did not highlight the importance of freight carriage on our waterways. We are however happy that the government has confirmed that any proposals by CRT to re-classify the commercial waterways will be subject to, consultation and determination by Ministers.

Going forward we welcome the establishment of a CRT Freight Advisory Group, but we have already communicated our concerns that this group will not have a broad or proactive enough remit.

What has not been detailed or to our knowledge highlighted is the relationship between CRT and the Department for Transport (DfT). We are concerned that going forward there will be no formal link between those responsible for national freight policy and CRT.

Your colleagues on the Transport Select Committee have on a number of occasions highlighted their belief that those waterways designated as commercial waterways should seen as part of a strategic transport network. Furthermore in 2008 they recommended that the responsibility for the commercial waterways be transferred away from Department for Environment, Food and Rural Affairs to the DfT.

The DfT has over the last decade put in place and supported a number of initiatives which have assisted in facilitating freight carriage on the inland waterways.

In 2002 in their response to the Freight Study Group report the DfT undertook to create a single focal point within their department for waterways issues, and while personnel have come and gone those within the inland waterway freight carrying industry were content that ultimately the officials within the DfT were able to exert influence upon officials within British Waterways on matters relating to freight and also put in place positive policies towards increased modal shift from road to water.

We would therefore ask that the question be put to both Tony Hales and John Kittmer.

What mechanisms will be put in place to ensure that the Department for Transport (who are responsible for transport funding and national freight policy) and the Canal and River Trust will work together to encourage modal shift and ensure that the freight carrying potential of the commercial waterways is realised?

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