



491\_18\_SD01 Independent internal report:  
Formal complaint review THMC8184  
(THMC7939, ENF2019082)

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# Independent Review of complaint made by Mr Steve Collins and 2 additional complainants (Mr David Garrett and Mr Andy Soper) related to a barge known as 'Hope'

## Introduction

I am Paul Wyatt and my current role is Operations Manager (West), for Herts and North London (HNL) Area. I have been with the Environment Agency since its inception and have held many positions within HNL including Area Environment Manager, Environmental Crime Team Leader, Lead Investigator, Project Manager and Planning and Corporate Services Manager.

I have not had any prior involvement in this complaint or related complaints nor did I know about the complaint until I was commissioned by Julia Simpson, Director of Thames Area, to carry out this review.

## Commissioning of this report

On 5<sup>th</sup> August 2019 Julia Simpson, Director of Thames Area, commissioned me to review the complaint made by Mr Steve Collins on behalf of himself and also Mr David Garrett and Mr Andy Soper.

## Background

The basis of the complaint(s) centres around a large barge called 'Hope', also known as 'Hope IV'. It is contended in the complaint that 'Hope' is '...currently being used as an unpowered houseboat, with people living on board.' Additionally the complaints make reference to availability and use of designated mooring sites for short periods of time usually 24 or 48 hours and overstays on the moorings.

In reading the complaint(s) it would appear that the complainant(s) is not satisfied with our regulatory approach to the barge 'Hope' / 'Hope IV' and the responses received from our Waterways department.

The complaint(s) state that they are dissatisfied with Thames Waterways Office's response to their complaints and reject the findings. As such the complaint(s) has been escalated within our complaints procedure to level 2 to be investigated by a senior independent manager.

# Complaint(s)

Outlined below are the points raised by Mr Stephen Collins specifically relating to questions he has raised both by himself , Mr Garrett and Mr Soper in the formal complaint.

“In a letter sent on behalf of Sir James Bevan to Sir Ed Davey MP for Kingston and Surbiton on 23rd October 2017 (your ref: JB/sm/7704) it was stated that: “we operate a zero tolerance policy towards boats overstaying on our land”.

- *When and why was this zero tolerance policy dropped?*
- *Why was Hope allowed to stay on EA land from 15th Sept to 26th Nov 2018 and then again from 2nd Apr 2019, with the implicit or explicit permission of the TWO?*

The EA’s visitor moorings on the River Thames have been managed for the last year and a half by Thames Visitor Mooring (TVM) in a pilot project which most river users have agreed has been a success, to the extent that they have managed such part of the River Thames and its river banks/moorings under their control. The same cannot be said of the EA. However on 31st January 2019 the moorings contract with TVM expired and the TWO issued a statement that:

“Off-site visitor moorings will be free but can only be used for stays of 24 hours and no longer. Use of these sites will be monitored by patrol crews, during routine patrols and any over stayers will be ordered to move on. If necessary, a Byelaw 58 Direction to Move Notice will be served and enforced against if required. Boat owners failing to comply are committing a criminal offence and which could result in prosecution”

- *Why has the TWO never successfully prosecuted any master of a vessel (including the master of houseboat “Hope”) for failing to obey and conform to the directions of any Officer of the Authority... under Byelaw 58 of the Thames Navigation Licensing and General Byelaws 1999?*

## Detailed Questions for the Senior Manager Investigating

This appeal and complaint relates primarily to the vessel Hope, but the actions of the EA with regard to similar vessels are also pertinent. I now raise a number of points, in respect of which I raise, where appropriate, questions for the EA to consider and revert:-

1. I attach a Timeline with regard to the unpowered houseboat which I understand is registered as Hope.

- *Please confirm that this is the case?*

2. It appears to be the case that since 15th September 2018, the EA has provided a “safe harbour” of free mooring for Hope with the exception of the period between November 2018 and March 2019.

- *Please confirm whether this is correct?*

3. It appears that Hope:-

- (a) Has no working internal means of propulsion or navigation.
- (b) Is providing accommodation for possibly 5 persons, possibly by way of commercial rent.
- (c) Does not have its registered name visible.

- *Please confirm whether this is correct?*

From what I understand to be the case, the response of the EA to each question above should be:-

1. No.
2. Yes.

3. Yes.

4. In that event, it appears that the EA is complicit in facilitating unlawful acts on the part of the owner of "Hope". In particular:-

- (a) Any public rights of mooring attach only to a vessel capable of navigation unaided.
- (b) Such rights do not attach to a vessel used for commercial letting and for residential occupation.
- (c) Were "Hope" to have such rights, which it does not, it would nevertheless not be entitled to moor, without any permanent agreement with the Riparian owner, for more than 24 hours.

I would refer you to section 79 of the Thames Conservancy Act 1932

Therefore unless the EA has granted the owner of "Hope" a licence to moor for any period beyond 24 hours, then it should serve notice upon the owner pursuant to ByeLaw 58 to remove the barge from EA land. To do otherwise would render the EA complicit in a breach of law, and liable, at the very least, to a claim for maladministration.

- *Please confirm whether the above is accepted. If not, why not?*

5. Furthermore:-

(a) It appears to be the case that the EA has allowed Hope to provide residential accommodation in circumstances where (i) the owner has no licence to do so and (ii) where there is no fire safety certificate.

(b) It therefore appears that were there to be any fire or other damage and loss to the occupiers of Hope, then absent any licence by the EA, and due diligence with regard to the safety of the barge which it has allowed to moor on its land, then the EA may well be liable to the occupiers, and any third parties that may suffer damage.

- *Do you agree with this?*

6. Furthermore:-

(a) It appears that the EA made a considered decision to move Hope firstly to its moorings at Hurst Park, then at Walton Gridley and Miskins, and currently at Desborough Island.

- *Why did the EA do so?*

7. Has the owner of "Hope" been served with any notice under ByeLaw 58 or has it been subject to any other enforcement action?

- *If not, why not?*

8. Moving on to the EA's management of other barges that it appears to have allowed to be moored indefinitely on its land – is it the case that barges belong to Mr. Trotman are moored on EA land, without the consent of the EA?

- *If so, has the EA taken any action to remove them?*

9. At a meeting between myself and Penny Yorath, Barry Russell and Nick

McKay-Smith of the EA's offices in Reading on 26th July 2018, I was told in connection with Mr. Trotman, the gist of which was "Steve, will you back off for a months, as we are going to initiate criminal and civil proceedings against him, once we have got all four of his vessels on our land"?

- *Is this accepted?*

10. The EA has powers under the Environment Agency (Inland Waterways)

Order 2010 to revoke the registration of any vessel and to remove from the waterways any such vessel not so registered.

- *Why has the EA not taken such action with regard to Hope and other illegal moored barges on its land?*
- *Is it because the EA has no idea what to do with Hope or other barges?*

11. Given all the above

- *Why and over 9 years has the EA mounted only one successful prosecution for unlawful mooring i.e. in contravention of section 84 of the Thames Conservancy Act 1932 (Byelaw 58)?*

12. I am aware from previous complaints to the EA with regard to the issues raised above, that the EA seeks to hide behind GDPR as a reason for not informing complainants as to the action which it is taking (or not, as the case may be) with regard to illegally moored barges. In circumstances where there is no request for disclosure of personal data that I can identify a living individual, in particular the owner of Hope, please specify exactly, if it be the case, why GDPR prevents the EA from answering any of the questions raised above.

This complaint, and grounds of appeal, are, that for the reasons stated above and particularly at points 1-12 above, and given the clearly evident inaction on the part of the EA, and its evasive response to the complaints.”

Mr Collins then includes a section on how he feels the EA has acted incorrectly.

The Letter in full is available from C&E Team .

## Source material for this report

In investigating this complaint I been in contact with colleagues in the Customers and Engagement team, Waterways Team and Legal Team.

I have received copies of the correspondence from Mr Soper on 11 April, 20 May, 31 May and 14 June 2019 and Waterways officer's responses.

I have received copies of correspondence from Mr David Garrett on 3 June and 18 June 2019 and Waterways officer's responses.

I have received a copy of Mr Stephen Collins original email of complaint, and attachments, addressed to our National Customer Contact Centre dated 5 July 2019

On Thursday 22 August I visited the mooring and on the same day met with the complainant Steve Collins (Chairman RUG8) and with other interested parties : David Garrett (Co complainant and Chair of Reclaim Our Riverside); [REDACTED] (RUG Reach Coordinator Sunbury to Molesey); and [REDACTED] (Member of Molesey Boat Club)

On Thursday 22 August I met with Barry Russell (Waterways Manager); Nick McKie-Smith (Waterways Manager, Compliance); Dan Taylor (Strategic Engagement Manager); Vincent Hoar (Technical Officer); and Elliot Beagles (Team Leader).

I have been in regular contact with Steve Collins during the investigation (emails and phone calls) and met him again face to face on Friday 13 September at our Hanwell Depot.

I have reviewed our internal policies in particular Operational Instructions 491\_18 'Internal Review of Formal Complaints' and 111\_01 'How To Handle Complaints'. I have reviewed a number of Environment Agency publications and newsletters including: 'Thames Waterways Compliance Plan Non Tidal River Thames 1 April 2018 to 31 March 2019' and other fact sheets available to the public and regarding 24 hour moorings and frequently asked questions and answers.

# Findings

My role as independent investigating manager is to establish: i) if the responses to the complaints were proportionate and in line with the organisation's policies and ii) whether our dealings with the barge 'Hope' / 'Hope IV' were reasonable and within the regulatory framework.

The large number of specific and technical questions raised in the complaint letter were considered not within the formal scope of my investigation although I felt it appropriate to ensure the Environment Agency responded. Dan Taylor (Strategic Engagement Manager) agreed at our meeting on 22 August to lead in collating the answers to these questions. It was decided that in order to maintain independence I would review the draft and when in agreement send our response letter to Steve Collins.

During my discussions with Waterways staff and legal officers I believe there are matters that can not be divulged nor discussed as to do so may prejudice the legal process or divulge personal information that is protected. As with any agency with an enforcement remit we are obliged to comply with relevant legislation including The Human Rights Act, General Data Protection Regulation, Police & Criminal Evidence Act, The Attorney General's Guidelines, The Regulators Code etc. My investigation shows there are matters ongoing which by virtue of the organisation's legal obligations cannot be divulged to the general public at this time. I believe this may be frustrating to the complainant(s).

In my experience (gained from previous roles as lead investigator and trial team lead for a major environmental incident and as Environmental Crime Team Leader) I am aware that the pace of any legal action is not wholly in EA control and consequently may be drawn out. This can exacerbate third party frustrations in not seeing timely outcomes.

During this investigation it is apparent that although most boaters agree with Waterways officers requests to comply with Byelaws / legal requirements there are a significant number who do not despite the best endeavours of the Waterways officers.

The Waterways department has jurisdiction over the length of the non Tidal Thames and have a wide work remit. Given the scale of the navigation and finite resources, decisions have to be made on a priority basis on how the navigation operates. I did not identify any evidence to suggest that priorities of the Waterways department were inconsistent with the significant demands on the department. Neither did I see evidence that suggests Waterways Officers were biased or unprofessional or not objective in their related dealings or responses. The correspondence I have seen to the complainant(s) was reasonable and courteous although at times our responses were rather delayed (eg 2 days late in regard Mr Garrett's complaint). I believe that the complaint(s) to which this relates were handled correctly.

During my conversations with the complainant coordinating the other complaints (Steve Collins) it became clear that behind the complaint(s) a major concern was how the laws and byelaws are being enforced by Waterways. The complainant stated he and the others felt Waterways target 'easy wins' (such as Marinas) but take little if no action when more difficult issues arise (such as 'Hope' / 'Hope IV' plus others similar). The view expressed to me is that Waterways should adopt an 'Enforcement Plan' not the current 'Compliance Plan' and should vigorously enforce all non compliance. Concern was also expressed that Waterways officers may become overly familiar with those contravening laws / byelaws and hence are less willing to take appropriate enforcement action against them.

During my investigation there was evidence that Waterways officers are empowered to use their initiative to help balance the various needs of the users. For example they have delegated responsibility for deciding whether a boat can moor on EA land for a longer period than that stipulated, currently 24 hours. The decision to allow 'Hope' / 'Hope IV' to stay considerably longer on EA moorings was one originally taken by a junior officer and from my discussion with Waterways on 22 August not with the full knowledge of more senior Waterways officers who may have had knowledge of the bigger picture.

I found no evidence to show that Waterways officers are unwilling to enforce non compliance. Indeed action has been taken in connection with the issue this complaint relates to. I believe however Waterways could have acted quicker in their dealings with 'Hope' / 'Hope IV' and adopted a speedier, more robust, consistent enforcement position. Having a senior officer or manager overseeing such work would help in achieving this but obviously this would require appropriate resourcing.

From my discussion with Waterways staff there was evidence to show that Waterways officers arranged for an EA tug to move 'Hope' / 'Hope IV' (twice). The decision to use an EA asset should only have been made after careful consideration and preferably by a senior officer or manager who maintains an overview of such work and has knowledge of the bigger picture.

Having said this I believe the Waterways department are best placed to make decisions on how they carry out their business for the benefit of all users, the waterways and business. Boaters individual circumstances are sometimes best known to Waterways officers and managers than others looking at an issue and these circumstances will contribute to how Waterways look to manage non-compliance.

**In conclusion , I confirm I have considered the evidence available to me and have reviewed the case. I have come to the conclusion that the complaint(s) is not upheld.**

## Recommendations

Although I have come to the conclusion that the complaint(s) is not upheld I have a number of recommendations:

- i) I believe that delegating responsibility in undertaking actions and making regulatory decisions on the 'front line' is a good one and was undertaken here in regard the vessel 'Hope' / 'Hope IV'. I recommend however that such decisions need the oversight of a more senior Waterways officer or manager to ensure consistency of (appropriate) action. The Waterways Team have a large remit and its competing tensions, issues, human factors and priorities require careful governance. I therefore believe the governance model for enforcement within the Waterways department should be reviewed and tightened.
- ii) This governance review should consider the following: Waterways being a consistent, regular attendee and active participant at the Area Enforcement Governance Group (EGG); appropriate Waterways enforcement action going through the EGG to help ensure appropriate governance of enforcement, achieve improved integration of functions, consistency and scrutiny and improve links into similar actions across the rest of the business; more senior Waterways staff being able to maintain an overview of all enforcement / regulatory positions taken to help achieve better clarity and consistency of approach; intelligence sharing (internally within Waterways and other EA departments and externally with other agencies) .
- iii) The process of how, when and why EA assets are used to move non EA boats should be consistent, visible and clear. How such action is perceived outside the organisation should be a consideration before authorisation.

- iv) From my investigation I believe it is impracticable to enforce every non-compliance on the river, whether witnessed by Waterways officers or reported by others including the public. This is in the same way that other enforcement functions within the EA and in other organisations such as the police have to prioritise what is investigated and actioned. To help better manage expectations Waterways should review proactive communication with customers on what can actually be achieved in enforcing activities on the non tidal Thames. A form of Position Statement or similar may be required.
- v) During this investigation I noted that individuals within our Waterways team have gone out of their way to help boat owners and other users of the Thames. I believe they should be congratulated for taking such a proactive, helpful stance.

Paul Wyatt  
Operations Manager  
Herts and North London Area  
02 October 2019.

Final