

Briefing for the Public Petitions Committee

Petition Number: [PE01693](#)

Main Petitioner: Graeme Harvey on behalf of Lowland Canals Association

Subject: Independent Water Ombudsman

Calls on the Parliament to urge the Scottish Government to establish an independent water ombudsmen to:

- safeguard the interests of waterway users
- review and arbitrate on disputes with Scottish Canals
- ensure that navigation along the full length of the lowland canals is maintained for the benefit of future generations.

Background

This petition is about how conflicts and complaints relating to the use of Scottish canals are dealt with.

The British Waterways Board (the Board or BWB) was established by the Transport Act 1962 as a UK-wide body. Responsibility for the inland waterways in Scotland was devolved to the Scottish Parliament by the Scotland Act 1998. In 2012, the Board's functions and assets in England and Wales were transferred out of the UK-wide body and into a charitable trust.¹ This transfer left the Board as a Scottish public corporation with its current assets and responsibilities.

The Board's operating name is Scottish Canals. Scottish Canals owns 137 miles of inland waterways with associated property and is responsible for operating and maintaining those waterways.

The ombudsman for Scottish Canals is the Scottish Public Services Ombudsman (SPSO). The SPSO can investigate complaints about most organisations providing public services in Scotland where a member of the public claims to have suffered injustice or hardship as a result of maladministration or service failure.

¹ by the British Waterways Board (Transfer of Functions) Order 2012 and The British Waterways Board Transfer Scheme 2012

As stated on the SPSO's website, the SPSO provides, "a free, independent and impartial complaints handling service for complaints about public services in Scotland". [The Scottish Public Services Ombudsman Act 2002](#) sets out the powers of the SPSO. The legislation describes the types of complaints the SPSO can and cannot look at, and what it can and cannot do about them. It gives the SPSO the duty of checking that an organisation has proper procedures in place and that those procedures are followed. The SPSO is not an appeal body for the decisions made by organisations. It can check that a decision has been properly made, but it cannot change or overturn the decision. If the SPSO finds that something has gone wrong, it can make recommendations to put things right.

The petition from the [Lowland Canal Association](#) argues that the SPSO's remit does not adequately cover the issues that boaters want to raise with Scottish Canals. One issue in particular is that the SPSO cannot arbitrate on "Action relating to the determination of the amount of any rent or service charge". This type of action is included in the list, contained in [Schedule 4](#) of the 2002 Act, of matters which the Ombudsman must not investigate.

Situation in England and Wales

The legal personality of the relevant bodies in England and Wales is distinct.

As described above, the assets and functions of the BWB which were situated in England and Wales were transferred to a charitable trust - the Canal & River Trust (CRT). Unresolved complaints about the CRT are considered by the Waterways Ombudsman.

The Waterways Ombudsman's website states: "The Waterways Ombudsman scheme is a voluntary, private scheme which provides an impartial and independent dispute resolution service for unresolved complaints about the Canal & River Trust which have already been considered under the Trust's own complaints process."

Suggested action

The petition Background document says: "This petition is therefore requesting the same safeguards for Scottish boaters and waterway users [as in England and Wales] and the establishment of a totally independent water ombudsman to safeguard the interests of waterway and canal users."

Scottish Government Action

In April 2013, the Scottish Government published a canal strategy [Making the most of Scotland's Canals](#) and in June 2013 Transport Scotland published a [framework document](#) setting out the roles and responsibilities of the various parts of the organisation. The 2018-19 Scottish Budget allocated Scottish Canals £11.8 million to operate, repair and maintain the canal network.

Scottish Parliament Action

The Local Government and Communities Committee last took evidence from the SPSO on 31 January 2018 (on her Annual Report 2016/17).² The SPSO's Strategic Plan 2018-2020 was published and laid before Scottish Parliament on 22 March 2018.³ Inland waterway issues are not specifically addressed.

No known action has been taken in relation to the petition.

Iain Thom
Researcher
24 May 2018

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² LGCC meeting papers [here](#), Official Report [here](#)

³ SPSO press release [here](#)