

PE1693/F

Scottish Canals submission of 30 October 2018

I refer to your letter of 2 October 2018 and thank you for the opportunity to provide our views on the action called for in the above petition to urge the Scottish Government to establish an independent water ombudsman and to address the concerns raised by the petitioners.

Scottish Canals collaborates with customers, communities, stakeholders and partners across the public, private and third sectors to derive greater public value from Scotland's canals by using them in new and innovative ways for the people of Scotland.

Scottish Canals attract 22 million visits per year from boaters, paddlers, walkers and cyclists, as well as over 3000 transiting boats a year from across the world. Scottish Canals have acted as a catalyst for the transformation of North Glasgow and the corridor between The Kelpies and Falkirk Wheel generating £15m per year for the local economy and supports 400 jobs. All of this has been achieved through the innovative delivery of public sector services in Scotland.

However, the canals are circa 250 years old, and are working heritage assets, which are under constant wear and tear from increased usage and pressure from climate change, accordingly, it is reasonable that we take a balanced approach to the safety of the public & users, finance and functional efficiency. Each canal requires considerable investment to maintain and, due to the increasing pressure on public finances, there is a repair backlog of £70m. We are currently addressing major works which have restricted navigation on the Caledonian and Forth & Clyde Canals in recent months and are keenly aware of the frustration this has caused our boating customers. We are grateful for the additional investment from the Scottish Government and our team is committed to concluding this work, with the aim to having the bridges open in Spring 2019.

To support the limited gift in aid provided by Scottish Government, Scottish Canals are committed to generating new income streams that will develop the canal corridor and raise additional revenue streams, which can contribute to the maintenance of the canals and operational running costs, thereby ensuring Scotland's canals can continue to be enjoyed by generations to come.

As a matter of accuracy I would draw your attention to the dowry that Scottish Canals received following it being devolved from England and Wales, which was in fact £10m not £100m as stated during the hearing.

We are committed to working collaboratively, to being even more transparent and accountable, and to find efficient and creative ways of addressing the challenges that we face. Since being appointed, I have already met the canal societies and representatives from Keep the Canals Alive and will continue working with them to build a more positive and productive relationship.

In reviewing the presentation to the committee and following discussion with various user groups, I do not believe that the establishment of an independent water

ombudsman is necessary at present, nor the best use of public money. Scottish Canals adheres to the Scottish Public Services Ombudsman (SPSO), processes and already fulfils this requirement. Like all public bodies, Scottish Canals has a two-tiered complaints procedure with recourse to the SPSO to consider complaints which have gone through our internal complaints process. The SPSO is independent of government and has a duty to act impartially providing a service which mirrors the principles of the independent Waterways Ombudsman Scheme operated in England and Wales.

We were disappointed with the concerns raised during the evidence session from some representatives of the Lowlands Canals Association and the Lowland Canals Volunteer Group. Our response to the main concerns raised by the petitioners is attached at Appendix 1.

We hope this response is helpful, however, I would be happy to meet with the members of the Public Petitions Committee, together with our Director of Infrastructure, Richard Millar, to discuss the concerns raised further if this would be helpful.

Appendix 1

Background

The Scottish Government's policy document for our inland waterways, 'Making the most of Scotland's canals', sets out the principles by which Scottish Canals operates. This can be seen by the ambitions in the Foreword which include "Scottish Canals will continue to receive government grant to meet its statutory duties and help progress new initiatives but are also encouraged to develop new and existing earned income streams."

Scottish Canals' 2017-2020 Corporate Plan was developed to reflect the expectations set out in this policy document and the three principles of increasing financial sustainability, growing public value and empowering and motivating people shape all that we do.

Scotland's canals contribute significantly to the economic, social and environmental prosperity of this country and much of what we do is delivered in partnership with local customers, communities, stakeholders and partners across the public, private and third sectors.

We invest significant time and effort regularly engaging with a wide range of stakeholders, including the boating community. Scottish Canals has held annual public meetings on the Caledonian and Crinan and twice-yearly meetings on the Lowland canals since 2012. These meetings were (and still are) attended by members of the Executive Team, Heads of Service and Board members. Meetings are set months in advance and boating customers are notified by email with the dates and locations publicised on the Customer Hub of www.scottishcanals.co.uk and via social media.

Following customer feedback, in 2017 we introduced one annual meeting on the Forth & Clyde and a separate meeting on the Union Canal. These meetings took place at the beginning of October, with one scheduled for the 08 November 2018. Customers were invited to submit questions in advance and minutes and presentations from the day are uploaded to the Customer Hub of our website.

In 2015 we introduced quarterly boating newsletters for each of the Caledonian, Crinan and Lowland canals which are emailed out to all leisure, residential and commercial customers detailing relevant operational information to help them plan their use of Scotland's canals. We have an open rate of 61%, which reflects well when compared with a UK public sector rate of 21%.

Petitioners' concerns

How Scottish Canals maintains its inland waterways

Scottish Canals has a rigorous inspection process for all 4100 assets within its portfolio and any issues identified are scheduled into a programme of works according to the risk they pose to the safety of the public, our visitors and staff as well as the budget that is available.

Scottish Canals' [Asset Management Strategy](#), which was launched in June 2018, sets out the significant challenges the infrastructure faces, not only from the additional £6-9 million per year required to meet the asset need and the £70 million repair backlog but from the impact of increased usage, climate change and the uncertainty of public funding beyond the next financial year.

The bridges on the Lowlands are an example of assets which failed, not due to a lack of planned preventative maintenance, but because they required significant additional investment. These bridges were able to be addressed sooner owing to the additional £1.625 million of funding from the Scottish Government to address the failure of these bridges in this financial year, albeit, they were not a priority as assessed in the Asset Management Strategy.

Our review of the transcript from the hearing on 27th September 2018 showed statements about the condition of Scotland's canals negatively impacting upon user numbers, tourism and other public benefits. However, our statistics show that the upgraded towpath network now welcomes 22 million visits per year from walkers, cyclists and commuters, the number of residential boaters has grown from a handful in 2013 to 127 in 2018, 3000 transiting boats visit the canals each year from around the world and the canals support over 450 long-term berth holders.

In addition, 2500 volunteers have carried out painting, litter picking, removing graffiti and vegetation management on and along the canals since 2016. In addition to improving the canal corridors, these individuals have also learned valuable employability skills.

Every year Scottish Canals enables charities, community groups and local businesses to hold more than 50 events on or along the canal banks, from fundraisers to sporting challenges. Scottish Canals has also introduced the annual Glasgow Canal Festival, the annual Red Bull Neptune Steps swimming race and the 2018 Year of Young People signature event the Youth Urban Games, which attracted 7000 attendees, engaged 1000 primary school children in urban sports and attracted 90 UK-wide athletes. This event was all paid for by third parties to drive inclusive economic growth, empower local residents and celebrate the ongoing transformation of North Glasgow.

Diversification of SC business has resulted in core business and statutory responsibilities not being delivered

Grant in Aid is paid by Transport Scotland to Scottish Canals under the Transport Act 1968 to enable Scottish Canals to deliver its statutory functions to maintain and operate the canals for navigation. It may be used for the creation of new operational canal assets but may not be used in respect of Scottish Canals' non-operational activity where it is acting commercially within the market e.g. creating a new destination along the canal, such as the Caledonian Canal Centre.

Scottish Canals is a public body, and the long term sustainability of its business model is based on a requirement to generate operating surpluses for reinvestment in Scottish Canals' assets, including those likely to produce a trading income for the organisation. Under the terms of the Transport Act 1968, Scottish Canals is required

to act “as if it were a company engaged in a commercial enterprise” in certain cases. Scottish Canals works to secure an adequate rate of return in the context of an acceptable level of risk and with due regard to the economic, social and environmental impacts for the benefit of Scotland.

Scottish Canals stimulates economic regeneration and drives tourism activity in key nodal locations across the canal network in Scotland to deliver public value and build its financial sustainability through working with a range of partners across the public, private and third sectors.

The £10 million dowry Scottish Canals received following its separation from the UK-wide organisation was to partly compensate for the sale of commercial property assets that took place across Scotland from the 1960s onwards. It was never to be used for the maintenance burden of the canals, which remains the Scottish Government’s responsibility. However, the purpose of this spend was always to generate income that would provide a more financially-sustainable future for Scotland’s canals.

Scottish Canals’ Pricing Policy and how it is implemented

Background to the Pricing Review

Following customer feedback to price changes that were introduced in April 2015, Scottish Canals commissioned an independent Pricing Review into how - and what - to charge boating customers. Respected property consultants Gerald Eve and Bilfinger GVA were appointed via the public appointments website and they worked with British Marine and the Royal Yachting Association Scotland to ensure they had appropriate understanding of marine and boating issues.

As part of this work Gerald Eve/GVA were tasked with gathering boaters’ opinions via a series of public meetings (which Scottish Canals did not attend) on each canal. However, following these meetings – and in response to customer feedback - Gerald Eve/GVA’s remit was expanded to include site visits to every residential mooring location on Scotland’s canals so they could independently evaluate the facilities, environment and attractiveness of each location to inform the pricing strategy.

Consultation on the recommendations from the independent Pricing Review

The consultation which followed did not focus on whether the methodology was correct or not – as both Scottish Canals and our boating customers had agreed at the outset (October 2016) that an independent review was the best way forward and that all parties would need to adhere to its recommendations. Instead, the consultation, which Scottish Canals delivered in an open and transparent manner, centred on how these recommendations would be implemented to ensure that they were fair, consistent and did not cause financial hardship to our boating customers.

Scottish Canals wrote to our 477 long-term berth holders, the canal societies, marine organisations, 38 harbours and marinas and all riparian and list MSPs publicising the consultation and inviting feedback. Some 78 respondents replied to 17 questions. In addition, feedback from a handful of customers led to Scottish Canals agreeing to accept a late submission from the Scotland Canals Boater Group (a precursor to the Keep the Canals Alive group) on the following two issues:

- What safety net should Scottish Canals adopt in order to provide a fair way of evaluating customers' circumstances in the event they couldn't afford to pay their mooring fees?
- Evidence that Gerald Eve/GVA had not used comparable marinas in England and Wales on which to benchmark their recommended mooring prices for Scotland

These late submissions were considered with all additional issues that were raised via email.

However, in a bid to be fair and transparent, prior to preparing the formal consultation response, Scottish Canals shared specific concerns with Gerald Eve/GVA about inaccuracy in the methodology and their benchmarking figures and asked them to double-checked their assessments and approach. Gerald Eve/GVA came back to say that they were confident that the methodology and data that was used was robust, fair and transparent. As a result, both parties upheld the recommended prices.

As detailed in the Gerald Eve/GVA report, recommended prices are for standard mooring sizes only and therefore may not apply to customers with boats that are larger than the standard size. However, Scottish Canals will liaise with the customer directly to agree a fair and reasonable rate for their mooring based on the size of their boat and the mooring space/services it consumes. Mooring prices will be published on Scottish Canals' website www.scottishcanals.co.uk

The extent to which Scottish Canals currently fulfils its statutory duties

By way of background, Scottish Canals is a public body, funded by grant-in-aid from Scottish Government and sponsored through Transport Scotland that makes a valuable contribution to the delivery of Scottish Government's strategic objectives as set out in the National Performance Framework. Scottish Canals, the operating name of the British Waterways Board was established by the Transport Act 1962 with specific statutory and regulatory obligations to preserve Scotland's system of canals in good condition.

In addition, Scottish Canals is required to comply with a wide range of statutory duties and legal requirements covering aspects such as heritage, safety, water quality and asset management to maintain the integrity and appearance of these historic structures as an important industrial legacy for Scotland. As Scheduled Ancient Monuments, the canals require particular care and attention, with the use of appropriate materials and techniques, as agreed with Historic Environment Scotland. Further, Scottish Canals must ensure that development of the network does not damage or detract from their original design.

Scottish Canals' core statutory duties are set out in in the Transport Acts 1962 and 1968, as amended for application in Scotland only, following the transfer of the functions of the British Waterways Board in England and Wales to the Canals and River Trust in July 2012.

Transport Act 1962

In terms of Section 10 of the Transport Act 1962 Act, the British Waterways Board, now operating as Scottish Canals, is under a duty "in the exercise of their powers under [the 1962] Act to provide to such extent as they may think expedient ... services and facilities on the inland waterways owned or managed by them ... and to have due regard to efficiency, economy and safety of operation as respects the services and facilities provided by them".

The Transport Act 1968

The Transport Act 1968 recognised the changing role of canals and rivers at a time when their use for freight distribution was in decline and the waterways leisure industry was in its infancy. Section 104 classified the nationalised inland waterways in use at that time as either commercial (for commercial carriage or freight) or cruising (for cruising, fishing and other recreational purposes) and set out statutory maintenance obligations dependent on this classification.

The Union, Forth & Clyde and Monklands canals were not operational in 1968 and were not named in the Act. They fell into a third category described as 'the remainder'. Under the Act Scottish Canals was required to deal with such waterways in the most economical manner possible consistent with the requirements of public health and the preservation of amenity and safety.

The rebirth of Scotland's Lowland canals started in the 1990s. The Forth & Clyde and Union canals, closed to navigation since the 1960s, were brought back to life through the Millennium Link project which commenced in 1999 with a contribution of £33.8 million from the Millennium Commission. The three-year construction process made the two centuries-old waterways navigable once more, created the iconic Falkirk Wheel which links the two canals, and provided a catalyst for regeneration across 68 miles of Scotland.

Reclassification of Forth & Clyde and Union Canals

The Millennium Commission specified that the canals should meet navigation parameters which were in line with waterways of cruising status. Although these navigation parameters had been in place since the re-opening of the canals in 2001, The British Waterways Board (Forth and Clyde and Union Canals) (Reclassification) Order 2011 formally reclassified the Union and Forth & Clyde canals from remainder status to cruising status. The principal benefit to the waterway of reclassification from remainder status to cruising status is to place on Scottish Canals a statutory obligation, under section 105(1)(b) of the Transport Act 1968, to maintain the Canal in a suitable condition for use by cruising craft indefinitely into the future. This safeguarded the investment made by government and the Millennium Commission by placing a statutory maintenance obligation on Scottish Canals.

Statutory Maintenance Obligations

Section 105 of the 1968 Act states that, with a view to securing their general availability, Scottish Canals has a duty to maintain the commercial waterways in a

suitable condition for use by commercial freight-carrying vessels and to maintain the cruising waterways in a suitable condition for use by cruising craft, that is to say, vessels constructed or adapted for the carriage of passengers and driven by mechanical power. The 1968 Act also states that it shall not impose any duty on the Board to maintain a waterway unless the dimensions of the vessel using the waterways correspond to, or are less than, those of a vessel which used the waterway, or part of, during the period of nine months ending 8th December 1967. The Caledonian and Crinan Canals are classified as commercial waterways and the Union and Forth and Clyde Canals as cruising waterways.

Scottish Canals has an Asset Management Strategy setting out its considered approach to maintenance of the canal network which also explains how Scottish Canals will prioritise repairs across the canal network within the available budget according to the safety of the public, our users and staff followed by operability.