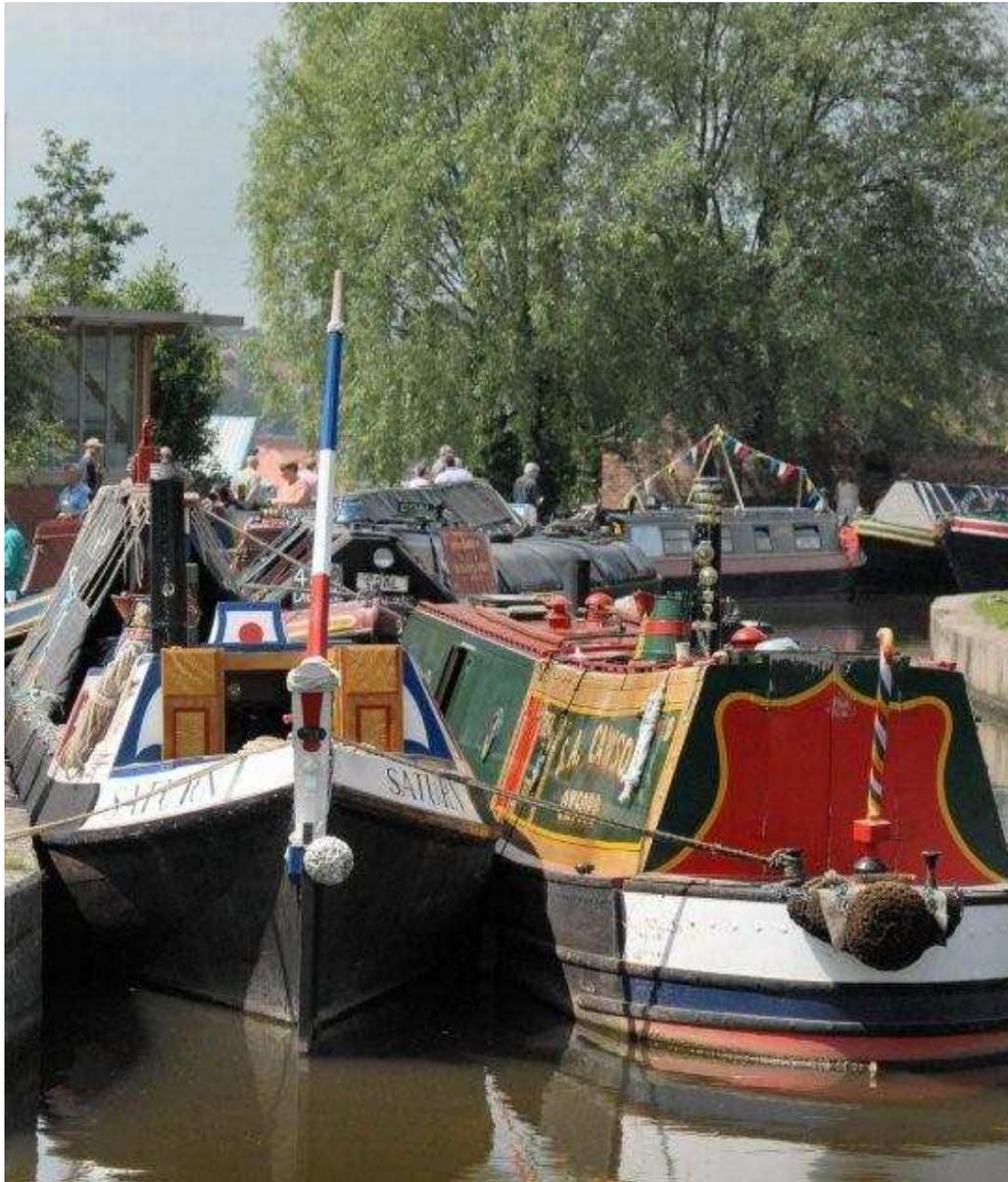


MEMORANDUM FROM THE ALL-PARTY PARLIAMENTARY GROUP ON WATERWAYS

The Future of The Waterways



July 2011

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Cover photograph - Wild Over Waterways event at Etruria Industrial Museum



A 'Yellow Flag Iris' (*Iris pseudacorus*) - The Waterways are a 4,000mile long nature reserve

Introduction

by Rt Hon Alun Michael MP, Chair All-Party Parliamentary Waterways Group

Britain's waterways are an enormously important part of our heritage. Our canals were largely constructed for transport purposes in the era of heavy industry, and their history is a fascinating subject in itself. But today they are not just a part of our history. They connect our inner cities and our rural areas in a unique way, and contribute significantly to our natural and wildlife heritage. They contribute to the economy and to our well-being and tourism and sport and recreation and to development. And they are valued as a precious asset by the public at large as well as by policymakers.



That is why there has been a great deal of interest in the proposition that our canals should be moved from being, in effect, “owned” by a Government Department to being a sort of “national trust for the waterways” which is independent and structured as a charity or trust or mutual organisation. Many questions have been asked: would such a new body release public energy or face significant and difficult challenges? The All-Party Parliamentary Group for the Waterways decided that the best way to make a constructive contribution was to undertake hearings on the two most significant topics of the changeover in order to help to answer these questions, those being governance and the financial arrangements of the new charity..

Our conclusion is that the change is to be supported, but we have highlighted concerns which we believe need to be addressed if the Governments proposals are to be successful in establishing a vigorous and vibrant independent body which will command support from all sides and make the most of this important part of our national heritage.

I thank the witnesses who readily took part in our hearings and both the Chairman and Chief Executive of British Waterways for their positive response to our enquiries. I thank the Inland Waterways Association, which has provided the secretariat for the group as well as David Padfield and Jo Gilbertson specifically for their work on this memorandum. And I thank the Minister, Richard Benyon who from the start expressed a willingness to engage with Members of Parliament and to listen to what we might have to say following the hearings.

I hope that everybody will find this memorandum to be a helpful and constructive contribution to the debate.

A handwritten signature in black ink that reads "Alun Michael". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Executive Summary – Conclusions and Recommendations

1.1 The All-Party Parliamentary Waterways Group exists to promote cross party consideration of matters of importance to Britain's inland waterways.

1.2 Following the general election of 2010, the group re-registered as an All Party Parliamentary Group in April 2011. The Chairman is Rt Hon Alun Michael MP and Tony Baldry MP is a Vice-Chair, both former Waterways ministers. The membership of the Group is recorded at Appendix A. The formal purpose of the Group is: "To consider matters relating to the system of navigable rivers and canals in the UK, estuaries and lakes upon which boating takes place, and associated activities. The coast and open sea are specifically excluded from the interests of the Group."

1.3 The Group is run by and for Members of Parliament. It does not seek to represent specific waterways interests but sees its role as to listen to all those with a legitimate interest pertaining to the inland waterways, and others with relevant expertise, so that following debate it can make constructive suggestions on issues affecting the future of this important element of our natural and built heritage.

A New Era for the Waterways

1.4 The Government published its consultation document on the future of the inland waterways, "A New Era for the Waterways", in March 2011. This essentially outlines the Government's proposals for abolishing its Arms Length Body – British Waterways – and for the transfer of the management and operation of the British Waterways inland waterways network to an independently run third sector body to be established on 1 April 2012. These proposals are critical to the future of the inland waterways.

1.5 The Group welcomes these proposals in principle as the right way forward for the management of the inland waterways, and it decided to review two aspects that are fundamental to these proposals. These are the governance arrangements for the third sector body and how it will be financed. The Government refers to this body as the New Waterways Charity and that title is used for the purposes of this Memorandum.

1.6 The Group has therefore invited written evidence and held two hearings to address these issues. These meetings took oral evidence from witnesses with relevant expertise and experience (listed at Annex B) and afforded an opportunity to key waterways stakeholders to offer their views. The hearings on New Waterways Charity Governance and Financing took place on 11 May and 8 June respectively.

Governance

We accept the practicality that the New Waterways Charity should begin life with fair representation of stakeholders but we believe that a membership model of democratic stakeholder representation to Council should be developed, with representatives elected by their organisations rather than appointed by the New Waterways Charity.

We believe that membership has so much to offer the new organisation in terms of engaging the public and developing a sense of ownership that there should be a clear timetable for moving to a full membership model.

We recommend that the Charity should begin life with a Council that comprises members that are elected by the relevant organisations where that is possible, and with representatives of other interest groups provided for through nomination in the first instance; and that the process and timetable for achieving a fully elected Council, and moving the Charity to a full membership organisation, should be incorporated into the articles for the New Waterways Charity and be a required milestone in the Government contract with the Charity.

Financing

The level of funding proposed by Government is insufficient to meet the needs of the New Waterways Charity. Estimates of the funding gap range from £15m to £45m.

British Waterways itself estimates a funding gap of £39 million in 2010/11 compared to what the company needs to achieve 'steady state' for the network and this estimate is supported by other independent witnesses.

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.

We recommend that Government consider the options which would enable the New Waterways Charity to be viable. We have identified three options to advise this outcome. They are:

- indexation of the government contract;
- retention of existing pension liabilities by central government and
- additional funding of the charity by government in the form of a transitional grant from central government to cover the substantial start up costs of marketing and fund raising in the first five years of the charity.

We recommend that Government seeks an independent professional evaluation of British Waterways' financial projections and methodology to verify the financial requirements.



The former Hovis mill in Macclesfield has been converted into 'prime location' canalside apartments

New Waterways Charity: Governance

2.1 The witnesses highlighted the importance of clear lines of demarcation within the governance structure. It was particularly stressed that trustees - and trustees alone - are ultimately accountable for decision making. All other participants in the governance process, particularly the Council members and volunteers need to understand and respect this responsibility.

2.2 Dame Fiona Reynolds (Director General of the National Trust) and Paul Boniface (Secretary of the National Trust) informed us that the structure and organisation of the New Waterways Charity as proposed in the consultation document suggested over complication and a lack of clarity. It needed to be simpler in terms of governance and in identifying accountability within the organisation. There seemed to be imprecision about the roles of the Council and the Board of Trustees and confusion over the role of Local Partnerships.

2.3 Dame Fiona added that the structure appeared to be similar to that adopted by the National Trust whose experience was that it is absolutely critical to have very clear roles defined for the different bodies to avoid any ambiguity. The National Trust Council appoints the Trustees, and holds them to account, but the Council is not the decision maker. That is for Trustees. The Council has a non-executive role. A Council role that Trustees welcome is that it can operate as a debating chamber in which strong views can be expressed on contentious issues with those discussions keeping the Board of Trustees informed of views.

2.4 It was noted that a trustee is subject to significant legal requirements and clear guidance is provided on the law in this matter by the Charity Commission. The trustees are legally responsible for the good governance of the charity, and are required by law to ensure that the charity is financially sustainable on foundation, and that the trustees do not expose the charity to financial risk. This fiduciary responsibility was stressed in a letter received by the chairman from Sir Stuart Etherington, Chief Executive of The National Council for Voluntary Organisations, he said;

“it is important that the trustees of any new charity are given sufficient resources through which to achieve the stated objectives of the charity and properly discharge their duties as trustees. We would argue that this is essential for an organisation which is being handed such an important national asset as our waterways”.

2.5 There was a strong indication that the model proposed in the consultation for governance, being exclusive of membership, was a missed opportunity in failing to harness the collective engagement of the many tens of thousands of stakeholders already using the waterways.

2.6 Michael Stephenson (General Secretary of the Co-operative Party) supported the direction of travel but questioned the detail of the governance proposals. He told us that the proposals as they stood were “a missed opportunity”, and could be more ambitious. The previous administration had favoured the creation of a mutual rather than a trust. The mutual model would allow for a greater involvement of ‘membership’, and allow members a more direct say over appointments and representation. He made a comparison with Network Rail, which was not accountable to its customers. There was diminished responsibility and accountability as a result of its governance structure. The National Trust might be an exemplar of a charity that is working well – but there were others that clearly were not working well. Network Rail was distant from the users of its service because it was very board focused. A mutual approach would help to prevent this, as had been achieved in a number of National Health Service trusts and housing mutuals around the country. The Government should look at good mutual models as alternative governance for the new body. There was no incompatibility between a mutual organisation and a Board of Trustees being the ultimate decision maker. The new body could still have a mix of appointees and elected members. It was a question of the right balance.

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2.7 Cliff Mills (practitioner consultant for a number of charities) told us about his experience in setting up mutuals and membership-based organisations. He said that he was also struck by the potential for engagement with the wider community. He believed that the statement of intentions in the consultation document – with membership as an option for the new body to consider later on – was wrong. The new body needed to start as a membership based organisation to generate engagement – membership was the point at which the public could become engaged leading to a sense of ownership. Unless membership was built in from the start of an organisation it could be very hard to move to membership later on. Membership empowered the community but empowerment required power to be given away and there could well be a disinclination for the trustees of a Charity to give power away at a later stage.

2.8 He said that the eventual nature of the organisation might take time to achieve but needed to be clear from the start. The Council should comprise a balance of appointees and elected members and whilst the new body would be more complicated, it could operate like the best examples of NHS Trusts. If the design of the organisation was right from the outset it need not be incompatible with a charity but accountability would be undoubtedly improved through membership. Under the currently proposed constitution arrangements, it seemed that preservation was fundamental to the purposes. But the opportunity to challenge, change and evolve would be lost with this model and there was a danger of preserving something in aspic. Membership would allow more freedom to direct evolution of the waterways in a positive manner.

2.9 Asked specifically whether he thought the new body should be membership, or representative or a combination, he said that he thought a combination would be the best approach. He didn't doubt the complexity but thought that representatives of some stakeholder groups might have to be appointed at the start rather than elected to avoid or overcome a lack of balanced representation between conflicting interests, or until a stakeholder group could sort out its representative arrangements. He also noted that British Waterways was a significant trading organisation, and this was critical to its income streams, so, whatever the status of the new organisation the commercial operations must not be impeded. That could be a problem with a charity. The new body would have to be set up to help protect and develop its income streams.

2.10 When asked whether there was a governance model that could be pulled off the shelf or whether it would need to be bespoke, he said that it would be necessary to consider the nature of other organisations that have similar features and draw on these. The outcome would no doubt be an amalgam of different characteristics which would effectively mean that the new body would have bespoke governance. He could see good reasons on reflection why there was a preference for a charity given the history, but the new body would have to be versatile including a method to increase the input of membership.

2.11 The Group felt that the Defra consultation document could give the impression that a Co-operative Society is a fixed legal form. It is not and can take many forms. For example they



A boat converted to be used by people in wheelchairs, Caldon

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suggest that a Co-operative Society scores low on Asset-Lock. Co-operative societies have a range of options available to them in order to protect revenues from member withdrawals. Co-operatives are not representative of the entirety of mutual models – as many mutuals are asset-locked. Likewise the suggestion that a Co-operative only has duties to members is incorrect, many ‘community cooperatives’ define the entirety of the community they serve as stakeholders.

2.12 Mr Mills continued that in his opinion there was a danger that failing to adopt a membership structure - at least in the sense of identifying clear stakeholder representative constituencies that could generate elected representatives to Council - could result in bad publicity and be seen as a device to cling on to power. In effect it would hold at arm's-length those who might benefit the new organisation most through their enthusiasm and potential financial contributions.

2.13 Set against these negative perceptions, the Group recognises the Government's view that in the early stages it was concerned to have the broadest spectrum of engagement with stakeholders and to build a broad level of support, rather than become almost wholly reliant on boaters. This had steered policy makers to consider the current supporters only model in preference to the membership model, which it felt could be developed later on if required.

2.14 In the light of the evidence we conclude that following the route outlined in the consultation document (setting up a governance structure which initially does not allow for membership) is likely to foster a perception of a lack of democracy and public engagement and to engender a concern amongst stakeholders that the new organisation is British Waterways under another name. This is a concern that we note that the Waterways Minister is on the public record as being keen to wish to avoid:

It is vital that we are extremely careful to ensure that we receive the best advice and get the correct model. I can assure her that officials in my Department are working hard on the issue and are committed to it, although we shall have a difficult time ahead with the comprehensive spending review, which I shall talk about in a moment. We would have to have a completely new board or council that would shape its own future. It would not be British Waterways by another name, but a new structure, in different hands altogether. We do not aim to impose a particular model for a new civil society body, so we will work up different options in partnership with stakeholders. Citation: HC Deb, 7 July 2010, c501

2.15 Once an organisation is set up it can be very difficult for that organisation to then move towards a membership model at a later date, however good the original intention.

Governance - Conclusions and Recommendations

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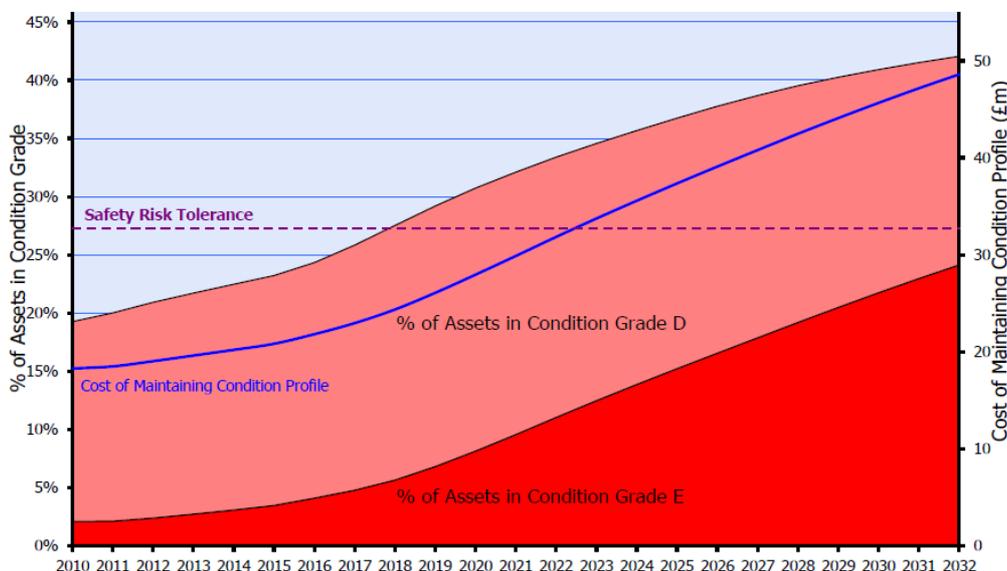
New Waterways Charity: Financing

3.1 We were informed by Robin Evans of British Waterways that the company had incurred a £10 million loss in 2010/2011. The total 'steady state' requirement for British Waterways (the amount of money needed to keep the assets in their current condition, neither improving nor declining further) was estimated to be £120 million per annum. Total waterways spend in 2010/11 was £81 million. The projected spend for the New Waterways Charity was estimated to be £87 million in 2014/15 with income at the same level, so no operating loss, but with an unfunded shortfall of £33 million to achieve 'steady state' [in 2010/11 this unfunded shortfall was £39 million]. British Waterways stated that their under spend would impact on the General Works Programme – in broad terms, on customer service (examples cited including – grass cutting, ease of lock gate operation, maintenance of refuse disposal and sanitary facilities for users, dredging, etc,) rather than Major Works.

3.2 We heard from other independent witnesses, John Edmonds Chairman of the Government's Inland Waterways Advisory Council and Clive Henderson Chairman of the national waterways charity, The Inland Waterways Association, both of whose calculations and estimates independently supported the approximate level of shortfall cited by British Waterways. We also note that the deficit figure is consistent with evidence presented to The Defra Select Committee inquiry into British Waterways' finances, and a subsequent KPMG report both published in 2008 and which was the catalyst for British Waterways making proposals to government to move towards charitable status.

3.4 Robin Evans maintained that for earned income they were confident that property income would improve significantly [net earned income £61 million in 2010/11; projected for £85 million in 2014/15]. It was put to him that such an estimate might prove wildly optimistic given the nature of the property slump and the current state of the economy, and it was suggested by the group that British Waterways prepare a forward plan based on a more conservative estimate.

3.5 Robin Evans explained that the current strategy for managing the finance shortfall on British Waterways' Major Works Programme was to try to manage their Principal Asset Register concentrating on avoiding too many assets falling in to categories D (poor) and E (very poor). The safety tolerance line for the condition of the principal assets has been notionally set at no more than 27% of assets being these categories. The target was for more no more than 22% of assets to be in these categories. Assets in these categories had reduced from 30% in 2000/2001 to a level of 19% this year. With the projected spend and income, without change, if the British Waterways network was to remain in government control assets would be expected to deteriorate to over 50% in categories D and E by 2032. However, under the projections from the modelling for the New Waterways Charity the condition of assets was thought to not breach the 27%



threshold for categories D and E. It was anticipated by British Waterways that the condition of the assets could be managed so that there would be a 7% increase in deterioration in the assets from 19% now to 26% in 2032.

3.6 Projections by British Waterways of the expected New Waterways Charity voluntary income indicated a gain of £5.5 - £6million by year ten of the Charity. We queried this figure as being optimistic, given the altruistic nature of the covenant between the charity and the giver, but were pleased to see that it was significantly reduced from the figures published in the consultation, that had projected the figures at £8million. Many charities see revenue from donations flat-line at some point in their growth. The group suggested that more robust data should be provided on the charity income projections, and that British Waterways make all data available that informed these projections, particularly which charities they benchmarked themselves against. We were informed by British Waterways' own charity consultant that the marketing and fundraising costs were substantial and likely to require sustained large amounts of investment to generate the indicated returns, with a return of £2 for each £1 invested at year ten, and making a loss in the first years, breaking even only in year four.

3.7 We heard that in addition to these figures (and not mentioned in the consultation document) British Waterways is now running a £70 million deficit on its pension fund, mostly in respect of employees who have since left or retired, and has according to correspondence between British Waterways and The Inland Waterways Association, a large and un-accounted dredging deficit of some 291km that is estimated to represent a further liability of between £23million and £24million.

3.8 Inland Waterways Association, Inland Waterways Advisory Council and National Council for Voluntary Organisation witnesses all made mention of their concerns regarding the need for the interim trustees to be confident that the funding for the New Waterways Charity was sufficient to allow them to register with the Charity Commission, and to not expose the charity to ongoing financial risk. Charity commission guidance states "trustees must: ensure the charity is and will remain solvent (and) avoid undertaking activities that might place the charity's endowment, funds, assets or reputation at undue risk". We stress that each of the trustees are required by law to satisfy themselves of the viability of the trust. That is an individual responsibility and it is therefore essential for the figures to be robust enough to enable them to make a positive judgement.

Financing – Conclusions and Recommendations

The level of funding proposed by Government is insufficient to meet the needs of the New Waterways Charity. Estimates of the funding gap range from £15m to £45m. British Waterways itself estimates the gap as £39 million in 2010/11 compared to what the company needs to achieve 'steady state' for the network and this estimate is supported by other independent witnesses.

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We recommend that Government seeks an independent professional evaluation of British Waterways' financial projections and methodology to verify the financial requirements.

All Party Parliamentary Group on Waterways - Membership

Rt Hon Alun Michael MP (Chair)
Tony Baldry MP (Vice-Chair)
Roger Williams MP (Vice-Chair)
Tristram Hunt MP (Vice-Chair)
Fiona Bruce MP (Treasurer)
Susan Elan Jones MP (Secretary)

Lord German
Lord Bradshaw
Mark Garnier MP
Karen Bradley MP
Heather Wheeler MP
Andrew Stephenson MP
Gavin Williamson MP
Huw Irranca-Davies MP
Lord Knight of Weymouth
Steve McCabe MP
Simon Danczuk MP
Andrew Miller MP
David Heyes MP
Lord Berkeley

List of Witnesses - Oral and Written Evidence

New Waterways Charity: Governance

Dame Fiona Reynolds – Director General of the National Trust

Paul Boniface – Secretary of the National Trust

Ben Metz – The Waterways Project at CIVA (Centre for Innovation in Voluntary Action)

Mark Walton – The Waterways Project at CIVA (Centre for Innovation in Voluntary Action)

Michael Stephenson – General Secretary of the Co-operative Party

Cliff Mills – Practitioner in the law and governance of co-operative, mutual and membership-based organisations (Principal Associate with Mutuo; consultant with Capsticks Solicitors LLP and Cobbetts LLP)

Sir Stuart Etherington - Chief Executive of the National Council for Voluntary Organisations (NCVO)

New Waterways Charity: Financing

Robin Evans – CEO of British Waterways

Margaret Bennett – Director, Think Consulting Solutions (advisors to British Waterways on charity funding issues)

John Edmonds – Chairman of the Inland Waterways Advisory Council (the independent statutory consultative body set up to advise Government on the inland waterways)

Clive Henderson – Chairman of the Inland Waterways Association (national charity for the inland waterways)