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Dear Sir/Madam,

## **Directly Managed Moorings: Pricing and Allocation**

### **Executive Summary**

This document represents the formal response of the National Association of Boat Owners (NABO) to the consultation 'Directly Managed Moorings: Pricing and Allocation'.

The consultation paper invites respondents to reply using a pre-determined questionnaire. We have not replied using this format, in part because we believe the options it offers are biased and unhelpful.

However we believe that the comments below make our views clear on three of the criteria BW have asked respondents to assess the Options it proposes, with respect to:

- the transparency of each option,
- the general acceptability of each option, and
- the effectiveness of each option to help determine market price.

As we say below (and elaborated in Appendix B), we do not believe BW has offered sufficient evidence to enable us (or anyone else) to offer a meaningful or rational assessment of the cost effectiveness of any of the Options, individually or relative to each other.

We have outlined our views in detail under the following section headings:

Section One - The basis of these views.

Section Two - Our views about the context, position and appropriateness of the Moorings Tenders Trial and the associated public consultation and its timing.

Section Three - Our assessment of those Options BW has offered.

A - Bid based options for pricing and allocating moorings.

## B - Waiting list based options for Allocating and Pricing moorings.

### Section Four – Conclusion and further comments

Our overall conclusion is that we favour Option 1 but insist that it should be implemented with four key principals in mind and must be administered by BW in such a way as to be transparent to current and potential BW mooring customers.

- Retain the current moorings pricing policy but undertake the full market review element within that policy's wider comparative valuation methodology less frequently.
- Develop a transparent national waiting list with mooring vacancies publicly advertised on line through the existing website.
- Instead of allocating vacancies to the highest bidder, allocate vacancies on the basis of applicants' waiting list points.
- Undertake proper and transparent analysis of the national waiting list in order to produce evidence about national and local as evidenced by preferences.

Our detailed reasoning that leads us to these conclusions is set out in detail in the following pages.

## **Section One - The basis of these views**

A senior BW officer recently questioned the ability of ‘user groups’, such as NABO, who it supposedly treats as representative organisations during its consultative process, to accurately represent the view of boaters.

Full membership of NABO is conditional on being a boat owner (individually or jointly with others) on the inland waterways in on or on the tidal estuaries of the United Kingdom. Representing those individuals’ interests is our raison d’être. Our executive officers are elected annually, at our Annual General Meeting.

For the avoidance of doubt the views that follow have been tested against NABO members’ opinions in the following ways.

- Publicising to members full details of the Mooring Tenders Trial and associated and preceding events including offering directions to publicly available material from BW on the subject through our newsletter and electronic bulletins to members and through regular public comment in the press.
- A clear protocol that all formal representations made on this subject to BW by officers on behalf of NABO have been subject to direct and usually detailed formal discussion and agreement by NABO Council in advance, and where appropriate by formal resolution.
- Where relevant, by briefing members personally, on request, or collectively through routine communications about aspects of the matter which BW have at various times attempted to claim should be confidential, yet which they have sought in part or whole to rely on in their public justifications of their action.
- Regular and specific invitations for reaction and feedback from members and review of all such feedback so received.
- Feedback from the many individual boaters who Council members, area representatives and other active members, people that we routinely meet and discuss issue with in person.
- Repeated debate of the issues by our governing body, NABO Council, the conclusions of which are promptly and regularly publicised to our members following each Council meeting and by subsequently taking account of the further feedback received from members in response to those deliberations
- Press and other public comment in response these communications where they occur in the public domain.
- Regular formal and informal soundings from and with our counterparts in other voluntary representative organisations.

- A pre-publicised invitation to members to participate in a debate on the issues currently under consideration at our 2007 Annual General Meeting and publication of that debate.
- Extensive participation locally and nationally in all consultative meetings and forums offered by BW where we can express our views. Copious written comments by e-mail and other correspondence offered to BW during the conduct of these exercises over the last two years since the matter was first mooted in camera in the Moorings Contracts Working Group.
- Several Freedom of Information Act requests submitted to BW and the associated correspondence arising out of two formal complaints to BW both of which have been fully investigated through BW's internal complaints process. In one instance elements of this matter have been formally considered by the Waterways Ombudsman.

The above activities and enquiries represent the extent of our consideration into this matter over the last two years and are the basis on which we have formed the opinions described below.

## **Section Two - Our views about the context, position and appropriateness of the Moorings Tenders Trial and the associated public consultation and its timing.**

Whatever the outcomes of the current consultation we wish to highlight the broader context which has led up to this exercise and our serious concerns about how this consultation and events that have led up to it have been prepared and presented.

The following comments do not directly contribute to the question of how to proceed from the current situation, but we offer these observations as evidence that the situation we are being asked to comment has arisen following a series of significant mistakes and omissions on BW's part. We believe the consultation can only be properly considered in the context of what we contend are serious shortcomings in BW's conduct.

*1. We believe that BW have demonstrated a long held prejudice against waiting lists and have never made a credible or thorough attempt to run waiting lists effectively or transparently.*

We believe that BW's claims about the ineffectiveness of waiting lists to inform pricing and market rate are misleading and a reflection of both technical naivety and an irrational prejudice against examining this alternative more carefully.

As a result we believe that BW's assessments of the Options in the Consultation Document (Section 6) is incomplete and unfairly and unreasonably biased against a waiting list option.

2. We believe BW has failed to record and/or disclose or sufficient details to enable consultees to fully assess the financial impact of the mooring tenders trial.

We believe that BW has wilfully or by simple omission failed to provide sufficient information to enable stakeholders (or perhaps themselves) to assess the financial impact of the trial. We enclose a short commentary on aspects of the outcomes of our requests for such information at Appendix B.

3. We do not accept that BW's current pricing mechanism is so completely inappropriate nor so incapable of improvement that it should be permanently discarded from the Options available to BW.

We believe there is a major flaw in the comparable price assessment mechanism within the current BW pricing policy, a flaw that has never been adequately considered. The flaw is in the application of the current pricing mechanism, specifically that BW attempts this exercise of assessing comparable values to private operators' charges too frequently.

When the issue of how to most transparently price BW moorings was first previously raised, when the current underlying pricing policy was introduced, (and according to the then Waterways Ombudsman, this occurred without adequate or fully effective consultation), NABO and others proposed to BW that the current process would be more effective, more transparent and much easier to administer if full market reviews only occurred say every three years or perhaps five year (instead of annually). We believed that looking at comparables over a period of several years was more likely to provided clearer evidence of any trends and discrepancies in moorings prices than annual reviews and adjustments. We proposed that in intervening years an inflation-based index be applied. This is of course a tried and tested model elsewhere in property rental valuations.

We specifically invited BW to consider this (and many other matters) before they committed to the tender trial but while they acknowledged that we had correctly identified that frequency of review was an issue, they refused to discuss the most obvious option to address or that flaw in detail before imposing the moorings tenders trial.

*The consultation paper does not mention or discuss the possibility of this option, which we have long advocated privately and publicly to BW, of retaining the current policy but scheduling the full market review elements onto a more realistic timetable.*

*(In the context of the current consultation we believe this option might constitute either an Option 6 or perhaps a variation of Option 1 and we elaborate on this below.)*

4. We believe BW is guilty of a long-term neglect of its boating customers and in particular a persistent failure to have effective evidence based strategies in place to manage facilitate and finance adequate boating facilities generally.

Although BW's prime directive is to maintain the physical state of the canal infrastructure, BW's other and directly implied primary duty is a navigation authority.

We say that in BW has systematically failed to provide adequate facilities to service the number of craft it licences for over a decade. (See also Appendix B.)

We say that provision of a reasonably adequate network of short and long term moorings is an implied duty that BW has neglected to take seriously and only recently attempted to address.

BW has for many years promoted and encouraged increases in the overall number of craft on the finite waterways network but has neglected to provide or facilitate a proportionate increase in boating facilities.

*In the wake of this recent history, to begin to allocate and price elements of those facilities that are available to the highest bidder is unfair and unreasonable*

5. We believe a deeply misguided decision was reached by the BW Board when it agreed with executive officers' recommendations to omit undertaking public consultation before committing to the Moorings Tender Trial.

We believe that the omissions we allege above and others have endured entirely as a result of the BW Board accepting senior managers' recommendation not to undertake a stage of public consultation into these issues before BW launched the trial.

We believe this omission is financially and procedurally negligent and that as a result the trial was launched into without sufficiently careful consideration of its financial and wider business impact.

We further believe that this way of approaching this matter has made a mockery of BW's published consultation procedures.

We here note that our recent Ombudsman complaint on this point confirms in the clearest terms that there is no appropriate or accessible review mechanism by which boaters or their representatives can challenge the wisdom or soundness of any such unilateral BW policy decision to vary from its published consultation procedures. Such questions lie outside the Ombudsman's terms of reference.

We unashamedly remind BW of the long held view in NABO that there is a strong case for a regulator or arbitrator available as well as an Ombudsman

service. The former should exist precisely to consider such questions of whether BW is following best practice when formulating policy.

6. Concerns about BW's apparent failure to take account of the impact of the Tender Trial on other existing policies.

There are a number of potential conflicts between other BW policies and the Moorings Tender Trial that do not seem to be easily reconcilable. However the most serious of these is with the Online Moorings Policy referred to in the consultation paper.

BW admits that it is seeking to reduce its moorings portfolio, but it is also, by means of the Tender Trial, simultaneously marketing vacancies in the remainder of that portfolio to the highest bidder. NABO are still carefully considering the implications of this state of affairs and the joint impact of these two policies.

The most serious allegation from some quarters that BW are wilfully lowering supply in order to artificially increase demand and therefore price.

We reserve judgement on the validity of such an accusation but believe that one outcome of this consultation should be a full and frank discussion of the compatibility and appropriateness of allowing these two policies to operate simultaneously. We question what if any checks and balances should apply to ensure that BW cannot be accused by boaters of price fixing.

7. BW has only provided anecdotal evidence to support a key assumption that was applied to justify the Tenders Trial, that the existing BW moorings pricing mechanism is not already achieving a close approximation to market rate.

We have been unable to find any evidence in the public domain that supports the allegation that the current policy (of applying a comparable valuation methods) is leading to significant differences in outcome in price for BW managed moorings compared those charges set by independent operators for comparable moorings. We note that BW says the trial is in itself an exercise to attempt to address this criticism.

However the results of the Tender Trial in our view tend to confirm that on average BW prices are close to the market rate, when you take into account our analysis below that the prices achieved in this exercise need to be discounted because you are not comparing like with like.

As a result we say that the Mooring Tenders Trial is an unnecessary, expensive and inefficient response to this question and we contend that analysis of existing pricing information has either not been adequately attempted or failing this, that public evidence has yet to be provided which shows that BW's mooring prices were ever significantly at variance with those of private operators.

We also note that there is considerable doubt as to whether comparing the price of linear moorings (which represent the large majority of BW's moorings portfolio) with prices in privately operated marina moorings is a fair comparison when taking into consideration that most offline and marina moorings offer very different levels of service to a typical BW linear mooring.

For these and other reasons we wish to say in the strongest terms that we believe this consultation is incomplete, partial and biased.

We also believe the consultation document contains a number of misleading statements. We have highlighted what we believe are some of the most significant examples of this in Appendix A.

We believe there are many issues, described in our submission, that should have been subject to wider examination and debate both before the Tender Trial was launched that even now, remain worthy of wider debate before a fuller decision on BW's preferred future mechanism for allocation and pricing of directly managed moorings is concluded.

We note that BW has at present allowed no time to conduct such a wider ranging public debate in its published timetable as to how it intends to apply the results of the current consultation. We hope they will reconsider this.

### **Section Three - Our assessment of those Options that BW has offered**

BW proposes one of five options for how it might allocate moorings and apply those results to its pricing process. Our response to these options is as follows and we split these options into two sub-groups.

#### **A - Bid based options for pricing and allocating moorings.**

Options 2, 3 and 4 all represent variations on the same principal, that of mooring vacancies being priced and allocated to the highest bidder. Our assessment of these three options is as follows:

Option 2 represents continuing as at present.

Option 3 represents adding a mechanism to the present mechanism where the highest bid is moderated by reference to the second highest bid.

Such an approach might partially address a concern of ours that the current system result in the price achieved representing what the most wealthy or the most desperate are prepared to pay. This in turn means that the prices achieved, which are in turn intended to be used as a partial reference for setting the price for other moorers in a given location, are always going to be at the high end of the market.

However we do not propose that this model is worthy of detailed consideration as we believe it would in any form be practically impossible for BW to guarantee



transparency in the final price to any party except through lengthy and cumbersome formal assessment, case by case.

In any case as we will suggest below we believe there is more attractive alternative.

Option 4 represents the option we would choose if we had to choose only from these three options. We would in those circumstance, with some serious reservations reluctantly agree that Option 4 is the best of a bad lot.

Indeed we have conveyed this view to BW directly earlier this year once it was clear that they were committed to trial-ing a mechanism that allocated the berth to the highest bidder.

This option was also the one most favoured by a number of other User Group reps and conveyed to BW, once it was clear they intended proceeding with a bid based system despite strident objections.

It was felt that the main merit of Option 4 is that the process is at least fully transparent if BW insist on allocating and pricing vacant berths in this way.

We note that BW did not apply this option in the trial.

#### **Options 2, 3 and 4 considered as a whole.**

Although we have briefly considered the relative merits of these three Options, NABO's fundamental objection to all these option remains as previously stated.

The price achieved represents what the wealthiest or the most desperate are prepared to pay for a mooring vacancy. We do not believe it is appropriate for a public body to allocate directly managed resources on this basis.

Any such mechanism, however packaged, is financially exclusive and disadvantages and marginalises many boaters on more modest incomes. This point of view is widespread as evidenced in appendices 1, 3 and 5 of the consultation document.

We believe BW has wilfully and against representatives' advice failed to adequately consider or investigate the impact of this aspect of a bid based allocation and pricing system on it's craft licence holders collectively.

More importantly we say that what is being bid for does not reflect the market price for a comparable mooring.

The price achieved under the Tender Trial reflects not just what the bidder thinks the berth is worth, but includes a premium reflecting what the bidder is prepared to pay as a premium for the additional benefit of not having to spend time on a waiting list.

This being the case the prices achieved by this methodology can never be comparable to the 'market rate' elsewhere because almost without exception an individual local waiting list system applies, which cannot be circumvented by offering to pay an additional premium above the going rate for any vacancy that does occur.

We believe that the impact of adopting such a policy has not been adequately considered. For instance we think two important issues that have not been considered or subjected to a meaningful impact assessment by BW, either before the trial commenced or since, are about whether the process in itself deters boaters, who might otherwise do so, from seeking long term moorings.

- If individual boaters do not believe there is any reasonable prospect for finding a long term mooring at a reasonable rate, they may withdraw from attempting to seek a mooring at all. However the evidence is that many in this group do not withdraw from boating. This will in turn have a direct financial impact on BW in terms of patrol and enforcement costs, as there will be relatively more “itinerant” boats to police.
- Any suggestion that this will lead to more licensed boats having to operate without a home mooring also fuels some more divisive undertones, which are already widely evident, in that a significant minority of BW's boating customers perceive that boaters without moorings are somehow cheating.

(In response to this last point we say the true situation is that if all boaters, both those with permanent moorings and those without, observe the correct mooring guidelines they are simply exercising their statutory rights as a craft licence holder to navigate at will.)

In summary we believe that any allocation and pricing method involving a bidding process at best indicates the what the wealthiest and most desperate are prepared to pay to obtain a mooring in a market where supply is highly restricted, in this instance in part as a result of the actions of the body inviting bids for the vacancy.

### **B - Waiting list based options for Allocating and Pricing moorings.**

We restate our belief that there is a strong and irrational prejudice against waiting list options held within BW and that this is reflected in the Consultation Document

As a result we believe that BW have failed to analyse waiting list based systems with any equal attention, rigour or diligence.

Despite being invited by ourselves and others to do so BW have steadfastly failed from the outset to analyse this option, in part by refusing the option of separating the two issues currently under consultation, i.e. BW have insisted throughout that the issues of price and allocation had to be conjoined.

We do not accept this rationale or think that BW has adequately justified their position for not considering these two related issues now under consultation more carefully, on their respective merits, as well as in conjunction. To this extent we believe the whole process of events is fundamentally flawed and biased.

We believe that both issues can still be addressed if BW were now prepared to investigate matters fully, by attempting to run waiting lists more professionally than they have done for the last decade.

We will now elaborate on this point in the context of the two remaining options:

### **i) Allocation and pricing by Waiting List**

This remains our preferred methodology for allocating vacancies. We will examine the two options BW has offered which fall within this sub-heading and offer further comments as to possible improvements on our preferred option.

Option 5 we reject as an unnecessary add on to the time honoured and widely recognised practice that longevity of an application should be a significant factor in most waiting lists for facilities and services.

The main attraction of this principal is its familiarity and transparency to customers and consumers generally, in virtually any sector one wishes to think of.

#### **Our preferred Option - Option 1 - To revert to a waiting list.**

Having rejected the other options BW has offered we are left with Option One.

However in recommending this option we do not do so simply my default. We genuinely believe that this option, if properly and transparently administered, can achieve the stated aims of the exercise as a whole:

- To allocate moorings vacancies on a transparent and fair basis
- To assist BW with gathering data on which to justify pricing decisions

However to achieve these aims we believe one must describe in some detail how Option One might operate. We must therefore also make two important observations about how his option should be implemented if it is to be applied to take matters forward.

- a) BW has expended in excess of £80 000 setting up its mooring tenders website.

We cannot say if this expenditure represents good value for money but we do believe that the openness and transparency that advertising all BW moorings vacancies publicly affords is very positive. This element of the trial should be retained.

Particularly given BW's current financial state we believe that an asset such as the associated website should also be retained if at all possible, purely in order to achieve some value out the expenditure that has already been irrevocably committed.

We say however that the current website could be improved and modified to accommodate Option 1: We believe it is likely to be feasible to modify the current bidding system so that candidates can bid their with waiting list points instead of by cash bids and in that way, moorings should and could be allocated to the person who bids with the most points.

- b) We would advocate a relatively simple and transparent points system for waiting list candidates and in the event that two applicants with equivalent points were successful in applying for a given vacancy. Only then should a simple draw by lots apply to determine the ‘winner’ of those otherwise equally prioritised applicants.

## **ii) Pricing by waiting list**

We will now address the other issue being consulted on, testing for market rate at a given site.

We believe that the data that would be held in a well run and transparent national waiting list, would provide transparent evidence of geographical and absolute demand, if it includes a suitable pointing system and if that that waiting list is subject to suitable analysis.

For simplicity and transparency we believe any points system that would be inherent to implementing our preferred option, needs as few as two factors present in order to provide meaningful and transparent information on which BW’s national and local moorings pricing policy could draw evidence of demand and preference.

1. a strong weighting towards the time on a waiting list individual customers are prepared consider in order to achieve their preferences, and
2. a secondary weighting that differentiated individual boaters’ geographical preferences.

Such simple binary data is also eminently suitable to apply in order to generate a clear mathematically based distribution of where moorings are most sought and therefore could be applied to justify relatively higher mooring prices where the evidence warranted this.

We believe a waiting list in this form, combined with a less frequent and therefore potentially more rigorous assessment of comparable values in the private sector would be an appropriate and transparent way to conduct moorings pricing policy.

## **Section 4 - Conclusion**

In conclusion we favour Option 1 but insist that it should be implemented with four key principals in mind which must be administered by BW in such a way as to be transparent to current and potential BW mooring customers.

- Retain the current moorings pricing policy but undertake the full market review element within that policy’s wider comparative valuation methodology less frequently.
- Develop a transparent national waiting list with mooring vacancies advertised on line through the existing website.

- Instead of allocating the vacancies to the highest bidder, instead allocate vacancies on the basis of applicants' waiting list points
- Undertake proper and transparent analysis of such the national waiting list to produce transparent evidence about national and local demand and potential moorings customers' geographical preferences.

### **Additional comments**

However we note that to implement this Option and achieve its full potential we are inviting BW to commit to running a fully transparent national waiting list system and that on the evidence to date, for them to accept this would represent a fundamental change in thinking.

Running a transparent national waiting list is something that in our view BW have failed to achieve for most of the last decade. More pertinently to now adopt such a methodology would we believe represent a course of action which in our view BW have consistently set their minds against when this option has been debated in the recent past.

BW have in the recent past specifically refused to countenance this option in detail when it was initially proposed by NABO and others as a cheaper and more effective alternative to investigate before any bid based allocation and pricing system was introduced through the Moorings Tenders Trial and pressed ahead anyway.

Because this alternative has in effect been summarily dismissed in the recent past we contend that BW has no evidence on which it can assess the cost effectiveness of this option versus other alternatives. The absence of such information or what we consider to be any meaningful attempt to gather it represents a major flaw and bias in the consultation process.

We therefore remain highly sceptical that BW will at this late stage give this option a fair hearing, and we again note that they have systematically dismissed it and refused to discuss it with us in any detail or seriousness for the last eighteen months.

We must also from experience of BW's past administration of waiting lists express our considerable doubt at BW's current capability to deliver such a system despite the numerous precedents and tried and tested models that are widespread in the public domain.

Despite all this NABO remains ready to discuss matters further with BW if they are now prepared to provide an opportunity to examine the possibilities of achieving their aims through a waiting list system, this time without prejudice.

## **Appendix A – Examples of possible Incompleteness, Impartiality and Bias in the consultation document.**

There are many statements in the Consultation Document which BW presents as fact which one could take exception to and indeed too many to constructively identify in full. The following examples are however the most serious examples where we feel the document presents information which we say is incomplete and therefore potentially misleading to respondents. Some of these matters we have commented on in our main response.

The reference numbers are the relevant paragraph in that document.

### **a) Incomplete analysis of the current national moorings portfolio**

2.2 and 2.3 – The Consultation Document fails to mention the existence, let alone the role and position of a third and very significant sector of moorings providers.

Private Boat Clubs and Associations provide a significant number of moorings on a not for profit basis. The Association of Waterway’s Cruising Clubs (AWCC) in particular represent such boaters and provides several thousand long term berths plus a smaller number of short-term and visitors berths on the network. Many AWCC members are also NABO members and while the AWCC will doubtless be making its own representations on this matter we make the following observation:

Charges for these berths are not generally set on a purely commercial basis of ‘market rate’, but more often with on the basis of cost plus running repairs and perhaps a sinking fund for major repairs or future development of new services to members. There is almost no profit element in these instances but these examples would provide valuable evidence of current costs of running moorings.

Mention of this important and independent part of the national inland moorings stock and the pricing mechanisms applied in that sector is notable by its complete omission within the consultation document.

### **b) BW’s analysis of its duty (or lack thereof) to provide or facilitate moorings**

2.5 We accept that there is no explicit statutory duty on BW to provide adequate numbers of moorings (or indeed any moorings at all) except those are essential to facilitate safe navigation. We also accept that there is no easy definition of “adequate” in this instance.

However we maintain that BW's statutory and implied duties to manage navigation efficiently and to allow freedom of navigation must imply that some attention is given to facilitating a suitable number of moorings in order,

- To maximise the opportunities for those who wish to have long-term moorings but who are unable to find them, so as to facilitate some reasonable expectation that an opportunity to acquire a mooring will arise in the future.
- To ensure the availability of sufficient boating facilities generally, (of which long term moorings are a fundamental element), to ensure that by in large the quantity and quality of such facilities keeps pace with the increase in numbers of craft BW accept licence fees for.
- To maximise opportunities to reduce the administrative burden which high volumes of licensed craft without long term moorings will inevitably create for BW in terms of needing to,
  - i. undertake a much higher level of enforcement activity against overstaying craft than might otherwise be necessary, and
  - ii. complicating the task of monitoring and administer enforcement process again unlicensed craft by making them relatively harder sub group to identify in the overall pool of craft without long-term moorings, and
- To maintain enhance the general quality of experience for all navigating boats, whether the boat has an associated home mooring or not.

The consultation document says little about any of this.

### **c) Background and history of the Marinas Initiative**

2.7 Although the current Marina's Initiative is welcome, we hold that this policy was adopted as much as a decade later than recommended and only then after considerable contention.

We contend that for some years prior to 2005, BW abused its dominance in the market through its wholly owned subsidiary BWML. It was only under extreme and prolonged pressure in particular from the British Marine Federation and the threat of legal action for unfair trading that BW adopted a more open policy.

No reference to these material facts is made in the consultation document and therefore one might argue it is misleading by omission.

We would therefore argue that BW has 'track record' with respect to failing to consult adequately or conduct itself in a fair and open matter on the subject of moorings provision.

We would also argue that this history means that an open market approach to the provision of moorings generally is still in its infancy and that in reality we are still far from having an open and transparent moorings market generally.

We think this context is extremely relevant to the subject in hand and should have been admitted to in the consultation document.

#### **d) Overall BW policy to reduce number of online moorings**

2.9 The commitment to reduce online moorings made to the British Marine Federation was entered into without public consultation with consumers and existing customers likely to be effected by the policy.

NABO's requests to review and modify the policy or undertake public consultation have been refused to date.

The policy has also in some cases been insensitively applied and led to significant complaints against BW.

In response to a Freedom of Information request asking in part BW to provide evidence of the availability of reasonable alternative moorings in the vicinity of those 87 moorings that have been closed under this policy BW have declined to provide evidence of this.

We must presently assume BW either cannot or will not provide evidence that it is complying with the detailed terms of this policy to only close moorings where there is demonstrably no demand. We continue to receive anecdotal evidence that individual customers are being forced to vacate existing moorings without reasonable local alternative being available.

#### **e) BW's past management of waiting lists**

2.12 The in this section statement is again misleading by omission. For many years BW did not run effective or transparent waiting list and many boaters have made accusations of unfair allocation practices. The Ombudsman confirmed that this was the case in the instance of the Agenda "1 Moorings in Oxford in 2004/5. Rather than make a concerted or meaningful attempt to run its waiting lists properly, we say BW at best made a temporary patch and then launched into the tenders trial. We say much more about this in our detailed submission.



**Appendix B – Information not publicly available, which we believe, hinders meaningful or rational assessment of the cost effectiveness of any of the Options, individually or relative to each other.**

During the last year or so a number of areas of uncertainty about matters of costs and the detailed financial impact of the Moorings Tenders Trial have emerged during our discussions and correspondence with BW. We have attempted to investigate these matters more fully with BW by direct enquiry and, in the case of what we consider to be the most critical financial indicators, by formal requests for information under the terms of the Freedom of Information Act.

We do not propose to include detailed analysis of the related correspondence here but we wish to note the outcomes which form the basis of our view that BW has either failed to undertake or is refusing to disclose detailed financial analysis of a number of matters that are pertinent to the current consultation.

In detail we say BW have provided little usable or credible information about the following matters.

- The relative administrative costs of allocating vacancies by waiting lists compared to moorings tenders including the estimated comparative administrative costs of the continuing process of assessing market rate under the existing formula which continues to determine price increases for the majority of berths that have not been subjected to tender.
- The frequency (or lack thereof) of administering complaints and challenges to that existing mechanism and the financial impact of administering such individual challenges to the existing policy.
- The financial impact and the associated loss in rental income BW has incurred due to implementation of its online moorings policy. In particular BW claim to be unable to collate analyse or present publicly any data for lost income during the period preceding the launch of the tenders trial, when they clearly held a significant number of berths empty in order to have a pool of vacant berths with which to launch the trial.
- What proportion of the moorings closed under the online moorings policy were closed while currently occupied by a customer and the prices of what BW deems were the suitable alternative moorings potentially available to such existing customers who were forced to vacate their current moorings under this policy.

The alleged inability to provide data in this example is particularly curious because,

- a) BW in their reply claimed that relevant information about other operators' prices was not theirs to give. This claim seems to be difficult to reconcile with the proposition in the Consultation that one purpose of the Tender Trial is to actively test whether BW is

undercutting its competitors. If this true this pre-supposes that comparison with those providers prices has previously been undertaken and that there is some significant variance that may need attention. BW cannot reasonably reach such a conclusion without having knowledge of those competitors' prices.

- b) We also note that BW are supposedly obliged to make such comparisons annually in order to implement their comparative pricing policy for setting fees for moorings that are not subject to tender.
- The decrease in rental income BW has suffered due to the implementation of its policy to reduce on-line moorings and the financial profile of those moorings so closed relative to their whole stock. The suspicion is that not only are BW deleting moorings from the stock but that those moorings deleted tend to be those at the lower end of the price range.
  - The detailed criteria that BW apply and the length of time it takes to apply those criteria (and the associated loss in income while this process is undertaken) in the event that a berth offered in the trial does not attract an acceptable bid to BW.
  - The detailed criteria that BW apply in determining what is an unacceptably low tender price, which in terms determines the bottom end of what constitutes a reasonable market led price.

We note in particular that in response to certain questions raised under the terms of the Freedom of Information Act, the terms of BW's replies have been couched in very specific terms.

In no instance have BW have not raised any of the statutory reasons why they should not disclose answers to the specific questions but have in general terms stated that the information requested is not easily available.

The only conclusion one can draw from response in these terms is that at the time of the questions BW have not attempted to analyse these issues.

As they have also not provided answers to such question in the Consultation Documents we must conclude that these issues have also not been considered by BW subsequently to our enquiries.

Consequently and in the absence of such information we conclude it is impossible to fully assess the financial merits of any of the Options on offer in the Consultation Document.