Lord Goodlad,
Secondary Legislation Scrutiny Committee
House of Lords
London
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From Richard Benyon MP
Minister for Natural Environment and Fisheries

28 May 2012

Dear Lord Goodlad

Draft British Waterways Board (Transfer of Functions) Order 2012 – oral evidence

Thank you for your letter of 23 May which contained a letter from Mr R. Freeman to the Secondary Legislation Scrutiny Committee. I am grateful for the opportunity to respond to Mr Freeman’s questions and will answer them in order.

Mr Freeman comments on Lord Scott’s question about the difference between the work of the charity and of the public corporation, and the satisfaction of the efficiency, effectiveness, economy and accountability tests of the Public Bodies Act. These matters were covered extensively in the oral hearing and in our written submissions to the Committee. I am pleased that the Committee has accepted our arguments on this point. Certainly, I do not accept that the move to the charity sector is simply one of ‘re-branding’. It will, for example, benefit the many and varied users of the waterways through the improved accountability of waterways’ management, which will be achieved through CRT’s governance structures. These include:

a) The Waterways Partnerships, which will have an advisory capacity in relation to the charity’s sub-national Waterways Management Units (e.g. on business planning and budgeting);

b) The Board of Trustees who will be generally accountable to the Council (in respect of the Government funding they will, of course, be accountable to Defra); and

c) The Council, which has the power to approve, remove and hold to account the Board of Trustees as well as act as a national forum for all interested parties.

In addition, the charity has given Government a firm commitment that each Waterways Partnership will produce a localism strategy, so that the charity grows the deepest roots in its local communities. Over time, the governance model of the charity will fundamentally alter the nature of the relationship between the users of the waterways and their management.
British Waterways Trading Operations

In his observations on BW’s trading operations, Mr Freeman has selectively quoted what Mr Evans said. Mr Evans did not say that ‘British Waterways cannot “trade”’, he said, ‘As a public corporation, we have some freedom but we do not have the freedom to trade and to go out and to generate income as we will as a charity.’ As a public corporation British Waterways can trade, but their trade activities are restricted to transactions which are adjacent to a waterway they manage, and they cannot directly borrow money from the market. As a charity, the Canal & River Trust will be able to form a trading company that will not have any such restrictions. The charity will be able to borrow against its assets and, of course, it will be able to fundraise.

Commercial Performance

Mr Freeman has asserted that British Waterways have a “long record of playing monopoly (badly) with funds that should be spent on maintenance”, which I cannot accept. Some commercial projects have not been successful, but BW's overall commercial performance has been exemplary. They have a long-standing record of outperforming market benchmarks and using the revenue from their investments to provide for the maintenance of the inland waterways.

Mr Freeman specifically mentions Gloucester Quays and the Waterside Pub Partnership, two joint venture investments by British Waterways. At Gloucester Quays, a designer factory outlet centre, British Waterways were caught up in the economic circumstances arising from the economic crash of 2008. Following a long period of planning, the development was commissioned in early 2007 at the height of the property boom but opened in May 2009 when the financial crisis was in full swing. This resulted in low occupancy and lower than anticipated footfall. The loss on the venture was absorbed by British Waterways’ capital expenditure account.

The Waterside Pub Partnership went into receivership in April 2011. As BW was a 50% partner in Partnership, this had no impact on British Waterways’ expenditure on the inland waterways, as their original investment of £2.6m was written off in 2008/9. In March 2011, British Waterways bought ten of the top performing pubs in the partnership for £9m and this acquisition will generate a further £675,000 per annum of income for their waterways, a 7.5% return on investment.

In both of these Joint Ventures BW’s private sector partners were selected as experts in their respective industries; the partners took the larger share of the commercial risk.

British Waterways runs a diverse investment portfolio to ensure the spread of risk and although not immune to the economic climate this has helped to mitigate the effects of the recession. The value of their commercial portfolio is now at £460m, which is only 8% below its value in March 2007 - prior to the onset of the credit crunch and wider economic recession. They have outperformed the wider UK property market which is still some 30% below 2007 values. British Waterways’ commercial property portfolio has not been immune to the economic situation in the UK but it has performed well, with some significant ground rents at Wood Wharf and Paddington providing particular stability.
Use of Funding Maintenance of the Network for Commercial Activities

I reject Mr Freeman’s assertion that ‘BW has a long record of playing monopoly… with funds that should have gone on maintenance’. British Waterways have always kept a very clear distinction between revenue – which it uses to pay for the operation and maintenance of the network – and commercial capital, which it invests in commercial activity to create revenue. British Waterways do not use money which has been received as Grant or through licence fees to subsidise their commercial activities. Nor do they spend the commercial capital (except on very rare occasions and on the basis that the capital will be replenished) on maintenance and repairs, because that would, over time, remove a large revenue source.

The fact that we are able to transfer a commercial portfolio of £460m from BW to CRT is a sign of BW’s success – across the economic cycle – in managing its commercial interests. Within CRT, the commercial portfolio will continue to provide a long-term income for the maintenance of the waterways. Under the arrangements agreed between Defra and CRT, CRT’s investment strategy for the transferred commercial assets will be subject to monitoring by a specially appointed ‘Protector’, so that the capital continues to provide a good return that can be invested in the waterways.

Asset Condition

Under Q20, Mr Freeman has taken what Mr Evans said out of its context. Mr Evans was not talking about the impact of investing or not investing in individual assets, but about the impact of particular levels of grant on the overall state of the principal assets (which is measured, as a proxy, by the number of ‘D’ and ‘E’ assets (i.e. those assets in the worst two conditions) as a proportion of the overall principal assets).

The proportion of assets in D and E grade is affected both by the overall level of income available for waterways management (from various sources such as licence fees, utilities contracts, income derived from capital, and Government grant) and by decisions about the allocation of the available income (e.g. as between asset repair, dredging activities, vegetation management, etc.). As our impact assessment demonstrates (see figure 4 on p.31), under the CRT’s projected levels of income (which includes, but is not limited to, income derived from the Government’s 15-year funding agreement) the condition of the principal assets is expected to worsen slightly in the first years of the charity’s existence (owing to restricted income during the current economic downturn), but to level off thereafter and to remain at a stable position throughout the period of the funding agreement. The proportion of D and E assets is forecast never to rise above 22% of the total; this is a much more stable and satisfactory state of affairs than has been the case over the recent history of the waterways.

Mr Freeman refers to recent breaches. Three breaches did indeed occur within 13 months of each about two years ago on the Monmouthshire and Brecon, the Caledon and the Staffordshire and Worcestershire canals. Breaches have been a feature of the network from the day they were built; however, they have become much less frequent in recent years. The canal network is inspected every month, with some low risk lengths inspected every three months, and British Waterways’ inspection procedures are more professional and more accurate since they replaced lengthsmen with dedicated inspectors. These practices will continue under the Canal & River Trust.
Council Elections

I do not accept that boaters have ‘no voice’ on the CRT Council. Defra and the then Transitional Trustees of the CRT reached agreement on the composition of the Council after extensive consultation of our stakeholders. It was agreed at an early stage that the Council should be populated with members from the many and diverse stakeholder groups who have an interest in our Inland Waterways. It was clear from the consultation that we had to strike an appropriate balance between the overall size of the Council (too large a body would not be effective) and the broad range of groups that wanted to be represented on it. In the event, we settled on 35 representative members, drawn from the different communities that use or benefit from the Waterways, including boaters, boating companies, canoeists, walkers, cyclists, heritage, environmental and community groups etc. as well as employees of CRT and representation from Chairs of Waterways Partnerships. Fair representation was prioritised for the first composition of the Council.

During the public consultation, it was clear that many stakeholders wanted as many members of the Council as possible to be directly elected by their ‘constituencies’. For this reason, the then CRT Transitional Trustees, with Defra support, settled on introducing the principle of direct elections from the outset, with the aim of eventually achieving direct elections for 50% of the Council members. For three constituencies a database was already available, which meant that boaters and business boating constituencies and British Waterways’ employees had direct elections earlier this year. Indeed, a range of candidates stood for election to the Council and the successful Council members were elected by their constituencies. The elections were freely and fairly conducted under the auspices of Electoral Reform Services. The process for nominating the other members of the Council was overseen by an Appointments Committee with an independent Chair.

Freedom of Information Act

I can confirm that, subject to parliamentary consent, the Government intends to apply the Freedom of Information Act (FOIA) to the Canal & River Trust, in respect of all those statutory functions it will inherit from British Waterways through the proposed Transfer Order. This provision has been included in the draft Order which your Committee has considered (see Schedule 3, para.15).

The Government settled on this delimited application of the FOIA to CRT following public consultation, the results of which are summarised in our Explanatory Document (para.8.22-8.24) and on p.4-6 of the Government’s ‘Summary of responses to the supplementary consultation on the Transfer Order “A New Era for the Waterways”, 12th September – 24th October 2011’, published in December 2011. The Government is not proposing to apply FOIA to all the activities of the Canal & River Trust because a balance has to be struck. The Canal & River Trust is an independent charity, though one that will be carrying out important statutory functions. The formula we have proposed means that the public will continue to be able to make FOIA requests in respect of the statutory functions transferring from British Waterways to CRT. However, accountability for the Canal & River Trust’s broader charitable purposes and activities (such as its fund-raising) should be left to its own governance and transparency arrangements – as is the case for any other charitable body.
Dredging

Dredging is currently an operational matter for British Waterways and it applies risk-based prioritisation to its dredging and wider maintenance activities. The Government requires British Waterways to operate and maintain waterways to standards that reflect their use and prospects of use. While in the future such matters will be for CRT to decide (in line with the overall income available to the charity), we expect that ‘use and prospects of use’ will also underpin CRT’s approach to dredging.

I hope that these answers reassure you and your committee in regard to the points raised by Mr Freeman.

Yours ever

RICHARD BENYON MP