

Port of London Authority River Works Licences for Residential Use

Review of the Charging Method

Report and proposals published 13th September 2011



**Your comments are invited on this Report, which is being sent
to all holders of residential River Works Licences and interested parties
as part of a process of a Public Consultation which closes on Friday 18th November 2011.**

This Report has been prepared by two independent consultants specialising in the field of moorings and marinas, with combined knowledge of mooring development, management, pricing and valuation, knowledge of the UK and London moorings market and national policy development.

A Steering Group was established to advise on the direction of the review, identify issues and provide a forum for debate. It comprised representatives of residential river works licensees, residential boaters and the Port of London Authority. The contribution of the Steering Group members throughout the course of a year has greatly informed this review, along with input from a range of licensees and house-boaters, for which we are very grateful.

This is the Report of the consultants' review and their proposals. All of the issues have been thoroughly debated by the Steering Group, although some issues were contentious and it was not possible to reach unanimous agreement on some aspects.

This Report includes a proposed method of charging for River Works Licences for residential use, phasing of payments (where increases are significant) and a process for dispute resolution. This Report and the proposals herein are now the subject of public consultation which runs until Friday 18th November 2011.

The Report has been sent to all holders of residential River Works Licences and interested parties with details of how to respond. Details can also be found at www.pla.co.uk ("*Independent Study*" on the home page) where copies of the Report can be downloaded.

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While every effort has been made to ensure the accuracy of information contained herein, the authors do not accept responsibility for any errors or omissions or duty of care or liability to any party who uses or relies on the contents of this report. It contains recommendations which are the subject of public consultation and are not the adopted policy of the Port of London Authority.

Front cover photograph: Thistleworth Marine, Isleworth

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EXECUTIVE SUMMARY

This is a review of the Port of London Authority's charges for River Works Licences for residential use on the tidal Thames. It includes proposals for a charging method, a payment phasing plan and a dispute resolution process.

These proposals are now the subject of public consultation, which runs from 13th September to 18th November 2011. The Report has been sent to all holders of residential River Works Licences and interested parties with details of how to respond, which can also be found at www.pla.co.uk ("Independent Study" on the home page). This Report has been prepared by two independent consultants specialising in the field of moorings and marinas. A Steering Group comprising representatives of river works licensees, residential boaters and the PLA agreed the scope and terms of the year-long review, identifying issues and providing a forum for debate. The consultants also engaged with many of the individual licensees and resident boaters, along with estate agents, surveyors, navigation and port authorities.

To be able to moor a houseboat on the tidal Thames, in addition to a PLA River Works Licence, the licensee needs access from dry land, consents such as planning permission, and needs to install and maintain the river works.

The current River Works Licences and residential moorings on the tidal Thames

There are 37 River Works Licences for residential use, accommodating c. 280 houseboats, clustered in twelve areas on the tidal Thames. The earliest licence dates back to 1972. There are very different arrangements for mooring. Half of the licensees have just one or two boats on the river works, many of which are owner-occupied or the houseboat is rented out; only five licences are for large sites, some of which are commercially operated, charging annual mooring fees. Some moorings are provided on a long term sub-licence; a few are occupied by large multi-tenanted houseboats. Access from dry land varies significantly between licensees, along with the cost. In some cases access is owned by the licensee, in others it is licensed/leased from the riparian land-owner.

The Port of London Act 1968 in relation to charging for River Works Licences

The PLA grants licences for works placed in the River under the terms of s.66 of the Port of London Act 1968 (as amended). A licence is valued in accordance with the terms of s.67 of the Act, which also provides for arbitration by the Royal Institution of Chartered Surveyors if the PLA and licensee cannot agree on the fee (the 'consideration'). Section 67.2 sets out the basis for the consideration as follows:

The consideration shall be the best consideration in money or money's worth which in the opinion of the arbitrator can reasonably be obtained having regard to all the circumstances of the case, including the value of any rights in, under or over land of the Port Authority, deemed to be conferred by the licence, but excluding any element of monopoly value attributable to the extent of the Port Authority's ownership of comparable land.

The problem

The PLA's setting of charges had become a contentious issue between some licensees and the PLA. Up until the early 1990's the level of interest in, and value of living afloat was low, so the PLA adopted a policy of RPI adjustments. However the lack of open-market reviews whilst houseboat mooring values were rising in this period resulted in the considerations slipping behind potential 'best consideration.' They adopted a more commercial approach from 1995 with chartered surveyors using market-based valuations and began to observe significant sales and rental values, an element of which constitutes the River Works Licence.

Understandably, open-market reviews met with resistance from some licensees, although over half of the current licences were granted after 1995 (since when market-based reviews were introduced) and most refer to a sum 'from time to time agreed or assessed in accordance with the PLA Act 1968 s.67'.

Some licensees question the PLA's approach, being concerned about their monopoly position as sole supplier of River Works Licences, and the use of newly agreed rates as comparables for other reviews. Many are unfamiliar with commercial negotiations and resent arbitration which can be costly and perceived as unfair in terms of the limited resources and ability of an individual versus an organisation to represent itself.

All parties want a charging method which is more predictable and transparent – hence this review.

How other UK navigation authorities charge for river works

Looking at the UK context for river works charges, the Government expects Port Trusts, of which the PLA is one, to operate commercially, as set out in its guidance *Modernising Trust Ports, 2009*. Some of the main UK navigation authorities charge for river works (or equivalent) as a percentage of the operators' mooring fees, recognising a split of value between the authority and adjacent land-owner/mooring operator and taking account of costs, while also having regard to the authority's monopoly position. This has provided established industry practice as a reference for this review.

Legal Opinion

In response to questions from licensees during initial consultations and to provide a firm basis for the review, the Steering Group sought a legal Opinion, jointly agreeing the brief and choice of barrister. The Opinion confirmed that the PLA is required to charge best consideration meaning '... best in monetary or commercial value...' but it must '... reasonably be obtained...' They can take account of the value derived from the licence and must consider all relevant circumstances of each case, but cannot exploit their monopoly position. The assessment is '*... one generally reflecting the market value for the mooring in the particular location in which it is situated...*'

The legal Opinion was that houseboat mooring fees are the prime comparators and the charge can be based on the reasonable potential of the mooring (if the actual use does not reflect its potential). Other considerations include a site's location on the Thames and site-specific factors. The licensee's costs must be taken into account, including setting up and installing the river works, outgoings such as maintenance and securing land access. The Opinion also confirmed that phasing could be appropriate if the scale of any increase was significant.

Indicators of value

The indicators of value across just 37 licensees and 280 houseboats are very diverse, from annual mooring fees to long-term sub-licences and houseboat rentals. There was insufficient evidence of any one indicator to provide a reliable basis for the charging method. The issue is further complicated by the River Works Licence being just one element of the overall value created, albeit an essential element. A total of eleven options were considered for the charging method, some of which had more merit than others.

Proposals

The proposed option for charges is **one third of actual net or notional net mooring revenue**. The main elements of this formula are as follows:

The **annual mooring fee** to use depends on the licensee: Where competitively priced mooring fees are charged, the **actual annual mooring** fee would be used. Where mooring fees are not competitively priced, or charged at all, a notional annual mooring fee would be applied.

The notional annual mooring fee is calculated as follows:

A London-wide residential mooring fee has been derived from a basket of some 20 commercial mooring sites across London (including canals, docks, the tidal and non-tidal Thames). Any decapitalised residential mooring sales prices would be added in future, where known. The London-wide mooring fee that has been calculated for this review is £336 ex VAT per metre per year.

This London-wide fee would then be adjusted for each of the 12 River Works Licence locations on the Thames. A postcode property index provides differentials between the locations (note that it does not apply property values to the moorings). A further adjustment would be made for any site-specific factors agreed between the licensee and PLA.

Applying the actual or notional mooring fee to the boats on site

The actual or notional mooring fee would be multiplied by the total length of boats on site, taking account of widths. If the licensee were not achieving the reasonable potential occupancy of the site, then the lettable metres would be used as the basis. The proposed adjustment for boat widths is as follows:

- Boats 2.4 metres wide and under – a deduction of 33% if the berth can only accommodate a narrow boat
- Boats above 2.4 metres and up to 5 metres wide - no adjustment (because the notional mooring fee has been calculated from sites accommodating this range of boat widths)
- Boats above 5 metres wide - an increment of 10% for every half metre, on a sliding scale

Deduction for maintenance and repair costs

The deduction for maintenance and repair costs for ALL licensees would be 15% (from actual or notional gross mooring revenue). This has been based on analysis of costs provided in confidence to the consultants by 15 licensees. The use of each licensee's *actual* costs or service charges was considered inequitable and too problematic since it would require scrutiny of accounts and could well result in dispute over which items are admissible and the reasonableness of the costs.

The PLA's charge for the River Works Licence would be one third of the net mooring revenue (actual or notional). This is because there are three parties involved in the establishment of a residential mooring: the licensee who contributes their capital and expertise; the PLA who grant the use of their riverbed by way of a River Works Licence and the riparian land-owner who grants the use of their land for access to the mooring (in some cases they may also be the licensee, or the PLA). Each party controls an essential element to enable the creation of the mooring and is equally reliant on the others. The consultants reviewed four recent licences (agreed or nearing completion) which were based on the principle of third shares, and also constructed a development appraisal, which satisfied them that one-third of the net mooring revenue provided a sufficient return to the licensee.

Large multi-tenanted houseboats derive value from letting/room rental which should be considered as the revenue. The cost deduction for large multi-tenanted houseboats would be subject to individual assessment, and the River Works Licence charge would be one third of the net rental.

Reviews

Periodic reviews of the PLA's charge to licensees for their River Works Licences would no longer be necessary because the formula would be applied **each year** to determine the annual sum payable, although occasional site-specific reviews would be prudent to monitor site issues. The proposed formula tracks market values, is derived from publicly available information and would therefore be a more reliable, predictable and potentially stable method. If the methodology were to be adopted, a basic review of its effectiveness is recommended two years after its implementation to ensure that the methodology and each element of the formula remain appropriate. Thereafter a five year review is recommended.

Dispute Resolution

A three-stage dispute resolution process is proposed with (1) the licensee stating their case to the PLA licensing team and, if unresolved, referring the matter to (2) a River Works Licence (Residential) Dispute Panel, which would comprise the District Valuer (who would chair the Panel), a senior officer, director or board member of the PLA and an experienced person to represent licensees'/house-boaters' interests. Suggestions for the third person are being sought via this public consultation. Cases should normally take one day and the PLA would pay the cost of the District Valuer, unless he/she considered the case vexatious. While the Panel's decision cannot be binding because either party still has the right to seek arbitration, it is hoped that arbitration would be less likely once the matter had been heard by the Panel.

Results of applying the proposed formula

Nine licences would have a decrease of between 2% and 26%; nineteen licences would increase by between 1% and 80%; one licence would increase by 202% (last reviewed in 1996) and one licence would have an increase of 223% (last reviewed in 1995 and **not** subject to RPI since.) In financial terms, there changes would be as follows:

- decreases *per boat* of between £20 and £1,080 for nine licensees (and thirteen house-boaters).
- increase *per boat* under £200 for eight licensees (and twenty house-boaters)
- increase *per boat* between £200 and £500 for four licensees (and ninety-four house-boaters)
- increase *per boat* between £500 and £1,000 for three licensees (and fifteen house-boaters)
- increase *per boat* and between £1,000 and £1,481 for five licensees (and thirty-one house-boaters)

There are six licences where it was not possible or appropriate to apply the proposed charging formula, and one where the effect cannot be analysed 'per boat' because the basis for the assessment is metre length of pontoon which differs from the total boat lengths on site.

The resulting change in revenue for the Port of London Authority would be a 24.7% increase. To put this in context, eight sites are paying River Works Licence charges which were assessed between seven and sixteen years ago, therefore a market-based assessment (using the proposed formula) after such a long period, would inevitably result in large increases for those licensees. There are also both some increases and decreases for several licensees which have been reviewed more recently, which possibly demonstrates some variations arising from the PLA's valuations, although they were based on evidence available at the time of the review.

Phasing

If adopted, the proposed method would take effect from 1st January 2012. However the date the charges take effect for each licensee would depend on their review date and the level of increase or decrease. The PLA would therefore need to consider all aspects of each case. The PLA have confirmed that the earliest they will backdate overdue assessments to is 1st January 2009, which is a reasonable concession given that some reviews were due as far back as 2006. Some parameters have been proposed which are considered equitable among the different licensees. They are designed to bring the considerations into line with current market value, as derived from the charging methodology, and in a reasonable way.

Conclusion

The proposed method is a clear, simple formula, equally applicable to the varied mooring arrangements. It is centred on market-based mooring fees, which are the prime indicator of value and are set by the market with the PLA at arm's length. It conforms to the legal Opinion and concurs with suggestions made by some licensees. The approach is comparable with established industry practice and is more cost-effective for the PLA to administer than the current process. It achieves best consideration for the PLA (as clarified by the legal Opinion) in a complex situation where the value of the River Works Licence element has to be 'extricated' from a combination of other factors.

It would provide certainty and manages expectations between all parties about their reasonable share of value, preventing anyone taking an unreasonably higher share than the others. Thus it provides a mechanism for the River Works Licence fees to remain the same proportion of the value of the mooring.

In conclusion it is anticipated that the application of the proposed formula would bring licences up to a reasonable current market value and provide a consistent, reliable approach to charging into the future.

Introduction

This is a review of the Port of London Authority's charges for River Works Licences for residential use on the tidal Thames. There are nearly 40 current PLA River Works Licences for residential use, accommodating c.280 houseboats; the earliest licence dates back to 1972.

The PLA grants licences for 'works' placed in the River under the terms of Section 66 of the Port of London Act 1968 (as amended). A licence is valued in accordance with the terms of Section 67 of the Act, which also provides a dispute resolution procedure (arbitration by the Royal Institution of Chartered Surveyors), if the PLA and licensee fail to reach agreement on the consideration (fee) for a River Works Licence.

To be able to moor a houseboat on the tidal Thames, in addition to a PLA River Works Licence, the licensee needs to arrange access from dry land, secure the necessary consents such as planning permission, and then to install and maintain the river works.

The basis for the fee paid to the PLA by the licensee for their river works is set out in the 1968 Port of London Act.

Section 66 states:

- (1) (a) *The Port Authority may for a consideration to be agreed or assessed in accordance with section 67 ... of this Act and on such terms as they think fit, including conditions as to variation and revocation of the licence and reassessment of the consideration from time to time, grant to a person a licence to carry out construct place alter renew maintain or retain works notwithstanding that the works interfere with the public right of navigation or any other public right.*
- (b) *A works licence granted under paragraph (a) of this sub section to carry out construct place alter renew maintain or retain works in under or over land belonging to the Port Authority shall be deemed to confer on the holder of the licence such rights in, under or over land as are necessary to enable the holder of the licence to enjoy the benefit of the licence.*

Section 67 (2) states:

- (1) *The consideration for a works licence shall be such ... as may be agreed between the Port Authority and the applicant or as shall, failing agreement, be assessed in accordance with sub-section (2) of this section by an arbitrator appointed on the application by either party after notice to the other by the President of the Royal Institution of Chartered Surveyors.*
- (2) *The consideration shall be the best consideration in money or money's worth which in the opinion of the arbitrator can reasonably be obtained having regard to all the circumstances of the case, including the value of any rights in, under or over land of the Port Authority, deemed to be conferred by the licence, but excluding any element of monopoly value attributable to the extent of the Port Authority's ownership of comparable land.*
- (3) *The assessment of the consideration ... for a works licence should not be referred to an arbitrator under this section until the other terms of the licence or, in the case of variation, the other terms that are proposed to be varied have been determined.*

Purpose of this review

The purpose of this review, as originally agreed by the Steering Group, was to examine and report on the PLA's current fee charging methodology, and to propose options for setting River Works Licence fees in the future which provide a greater degree of transparency and predictability for the PLA and licensees, taking account of the Act. The main outputs of this review are:

- (a) **a methodology for setting the fees for river works licences (including a mechanism for periodic reviews of the fees), that commands a reasonable degree of support from the houseboat community;**
- (b) **if the application of the methodology is likely to result in significant changes in the fees paid, a proposal on how changes could be phased in;**
- (c) **a less formal method for resolving disputes that will enable issues to be addressed within a reasonable time frame at the behest of either party, and will be as inexpensive as possible. This is intended to reduce the need to resort to arbitration, although this has to remain available to either party, as provided by the PLA Act.**

How the review was conducted

A Steering Group was set up to provide information and different perspectives, to be a forum for debate, to identify issues, to advise on the direction of the review and to assist in identifying and overcoming problem areas.

Members included three representatives of river works licensees (Organisation of PLA Customers), one representative of residential boaters (Residential Boat Owners' Association) and three representatives from the PLA. The two independent consultants were a senior valuer from the Valuation Office Agency (who also chaired the group), and Madge Bailey Associates. The group agreed the scope and terms of reference of the review, along with a comprehensive list of issues to be considered. For full details of these documents, the members and minutes of meetings, refer to www.pla.co.uk ("*Independent Study*" on the home page).

The key stages of the review:

- analysis of the PLA's River Works Licences and the houseboat market on the tidal Thames;
- research into the UK context for river works licensing (or equivalent) and the practice of other port/navigation authorities;
- extensive initial consultation and site visits to establish the perspectives of the licensees, resident boaters and PLA;
- a formal legal Opinion sought and jointly funded by the Steering Group members on the interpretation of the Act in relation to charging for River Works Licences. This provided a firm basis on which to proceed;
- development of a charging option and recommendations which were discussed and assessed by the Steering Group;
- final conclusions and recommendations of the consultants, contained in this report, which is now the subject of public consultation.

Throughout the process, the consultants engaged with a range of interested parties – individual licensees and resident boaters, estate agents, surveyors, navigation and port authorities and others. This provided valuable input and ensured a thorough review.

Why was a review needed?

The PLA's setting of charges had become a contentious issue.

Two sides of the problem

From the PLA's perspective, they have a duty to charge 'best consideration' as set out in the Act. Having observed increases in values when moorings/houseboats on moorings are advertised for sale, an element of which is the River Works Licence, the PLA have adopted a more commercial approach in recent years, using chartered surveyors and market-based valuations. This has met with a degree of resistance, particularly from licensees with older licences.

From the licensees' perspective, some question the PLA's valuation approach and interpretation of the Act, and are concerned about the PLA's monopoly position as sole supplier of River Works Licences. Many are unfamiliar with commercial negotiations. In the event of disagreement, licensees resent the route of arbitration. This can be costly and perceived as unfair particularly for individuals who have less resources and ability to represent themselves versus an organisation.

History of the problem

This history of the PLA's charging practice for River Works Licences, along with an increase in houseboat and mooring values over the same period, explains how this situation has arisen.

In the early years (1970s – early 1990s) the PLA did not take a particularly commercial approach to its River Works Licences because there was limited interest in living afloat (and hence the value of a licence was relatively low). The department managing licences was administrative rather than commercial and the PLA's resources were focused on other, more significant, business areas at the time. There were standard rates based on linear feet; for example, a charge of £275 for a vessel up to 70ft in 1987.

Although most licences provided for reassessment of the consideration, because many River Works Licence fees were for relatively small amounts the PLA adopted a policy of applying indexation on an annual basis, originally Retail Price Index (RPI).

Gradually, demand for houseboats and moorings increased in the 1980s and 1990s as the UK recovered from recession and house prices rose, up to the present day, where living afloat has a considerably higher value attached to it compared to the 1970s. There are now people from all walks of life living on the river, from those who came many years ago when it was considered very affordable – they made decisions based on the charges at the time – to those who have more recently sought a lifestyle afloat, sometimes paying a significant sum for a houseboat on its mooring.

The PLA's convention of applying RPI increases over a considerable period of time led to the considerations slipping behind potential 'best consideration' to the PLA when they came to apply open-market reviews using houseboat mooring values.

In 1995 the PLA engaged chartered surveyors to conduct residential (and other) River Works Licence reviews. They applied standard valuation principles using what they considered to be market comparables for reassessment. They sometimes used slightly different approaches for different sites, the principle being to take account of the site's specific circumstances (as required in s.67 of the Act), any specific terms of the licence, and differences between sites. They applied what they believed were the most relevant and suitable method such as footprint, linear metre of boats, mooring frontage etc. and suitable comparisons while seeking best consideration.

The PLA and their agents have continued to conduct reassessments on this basis as reviews became due; some remain in dispute or are on hold, pending this review.

The current approach

Understandably, open-market reviews have met with resistance from those licensees who had come to rely upon the PLA's former practice for some 20 years.

However, it should be noted that just over half of the current River Works Licences have been granted since 1995, since when market-based reviews were implemented and that most licences refer to a sum *'from time to time agreed or assessed in accordance with the PLA Act 1968 s.67'* which refers to best consideration that can reasonably be obtained.

For some licensees, the different valuation approaches and the use of comparables have appeared inconsistent and insufficiently explained, although the PLA were seeking to take relevant circumstances into account for each assessment. The licensees also resent the use of newly agreed rates as comparables for other reviews within what is a relatively small market (37 licences, 12 locations and 280 houseboats).

Considerations have sometimes taken years to settle. In some cases, where the settlement is a significant increase, it has been phased in over up to five years. Both sides are aware that arbitration is not welcome and in some cases the costs and the process itself can seem excessive in relation to the value being disputed.

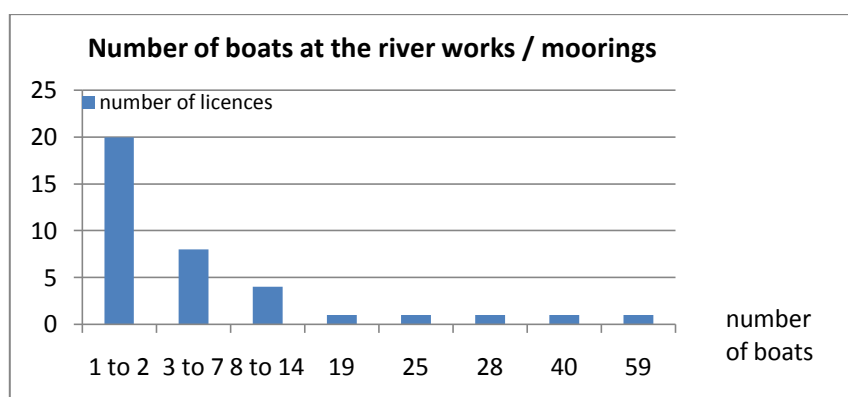
All parties want a charging method which is more predictable and transparent – hence this review.



Chelsea Yacht and Boat Club

Number of licences, houseboats and locations

There are 37 River Works Licences for residential use. They accommodate a total of around 280 houseboats of different sizes from narrowboats to large purpose-built two-storey structures. Over half of the licensees have just one or two houseboats on the works; only 5 licences are for large sites with between 19 and 59 houseboats¹.



The river works/mooring sites are at 12 different locations on the tidal Thames, with clusters of different licensees moored next to each other at several locations, shown below.

Areas	No. of licences	No. of boats – estimated
Twickenham	2	43
Richmond	8	18
Isleworth	2	32
Brentford	3	13
Kew Bridge	3	3
Chiswick	1	8
Chiswick Mall to Hammersmith	5	36
Wandsworth	2	22
Battersea	4	17
Chelsea	1	59
Nine Elms	2	3
Wapping	1	19

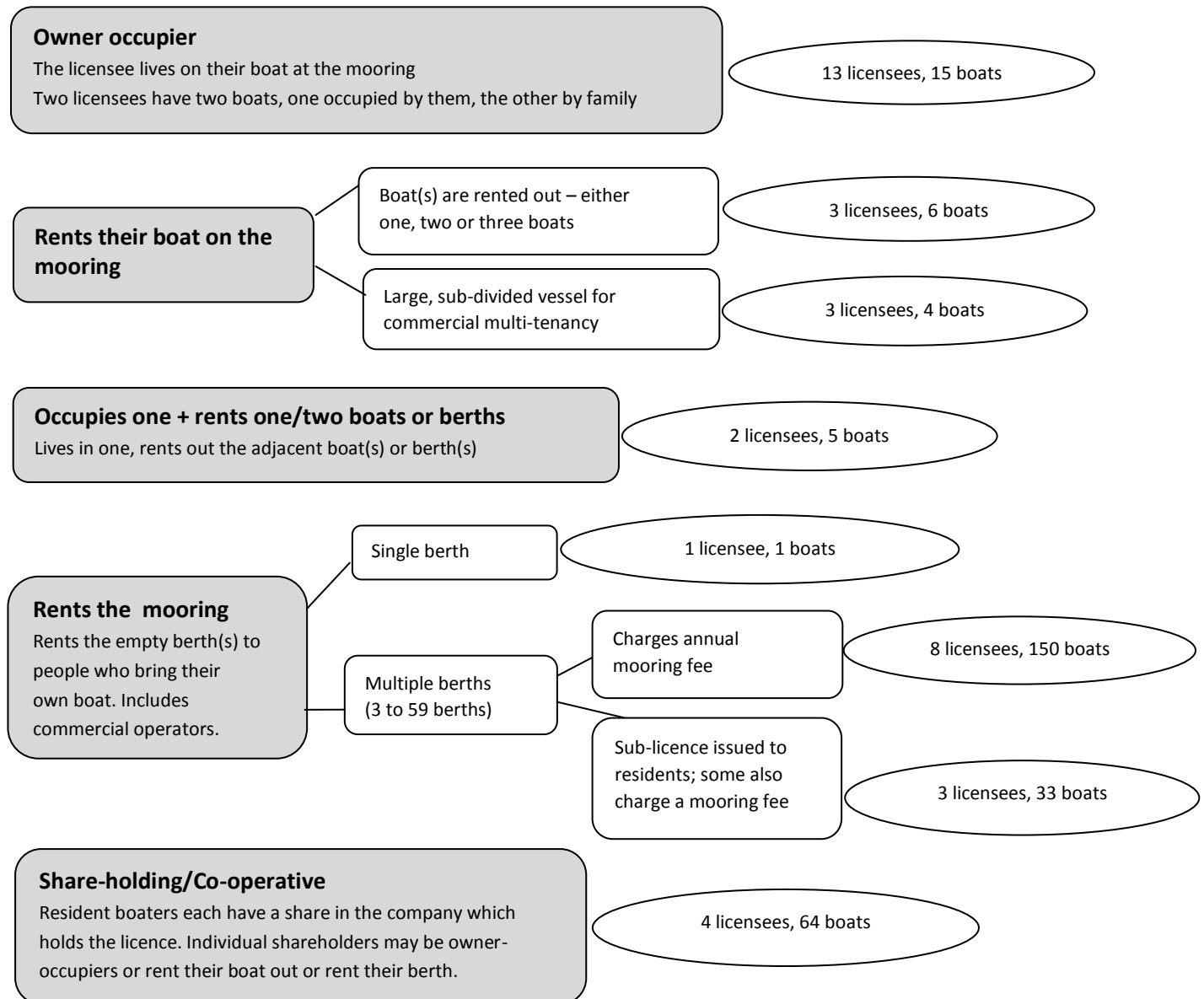
The earliest current licence is dated 1972; two-thirds of the licences date back 10 years or longer. Just over half have been granted since 1995 (when the PLA engaged agents to conduct market-based reviews). Reviews of the consideration for two thirds of the licences are unsettled (over half of these became due for review in 2010 and are on hold, pending this review). The last settlement for nearly a third of licences was between 7 and 16 years ago, which have since been subject to RPI increases (apart from one). In summary, there is a relatively small number of licences to consider, and many of the sites are small. Some of the current charges are likely to be outdated, whatever the method for charging, since they have not been reviewed for some time.

¹ The boat numbers at each site are based on recent information from some licensees or the PLA's record from when the last assessment was undertaken. Some sites also have leisure and visitor moorings but these are not included in the totals – only houseboats are shown.

Types of mooring

Among the 37 licensees, there are very different arrangements for the occupation of the river works/residential moorings. Half of the licensees are either individual owner-occupiers (living on their boat at a single mooring) or people who rent out one or two boats, or an empty berth. There are only a few larger, commercially operated sites, which charge an annual mooring fee. So, while some licensees generate annual revenue from the river works (through mooring fees, boat or room rental) others receive a capital sum when they come to sell their houseboat on the mooring, or a vacant mooring, or a long sub-licence.

The following diagram attempts to 'categorise' these arrangements. Several reasonable assumptions about use have been made where there has been no contact with the licensee.



At the time of writing, several licensees were in transition from individual licences to sub-licences (renting berths) from a new head licensee. The new arrangement has been included in the diagram above. In addition, there are also several more recently agreed licences which clearly state how the consideration is to be calculated, and are therefore are not subject to this review.

Land access

In order to use the river works, the licensee must have access from dry land. Access agreements vary significantly between licensees. In some cases access may be through a boatyard, or a reasonably sized private garden that is included with the mooring; in others it may simply be an access point along the Thames Path to which a gate and gangway are fixed. Examples are below:

- **owned** – the licensee owns the adjacent land, in some cases purchased many years ago;
 - **leased/licensed** – the licensor may be a property company, church estate or local authority, for example.
- The charge for access varies significantly from a nominal sum to several thousand pounds p.a. per boat. The length of term, and hence security of tenure, also varies from a few years in some cases to a longer term in others.

River Works Licence Terms

The 37 licences span some 38 years, with the earliest dating back to 1972. The PLA generally used standard templates for the licences in the earlier years, with updated editions as time went on, although some have ‘case-specific’ terms and, more recently, specific terms have been agreed as part of negotiations for the river works. A very simple overview of some of the typical licence terms are below.

Consideration	Many refer to an annual sum <i>‘from time to time agreed or assessed in accordance with the PLA Act 1968 s.67’</i> . A few refer to a percentage of mooring revenue. Some have an additional reference to annual increases between reviews in line with RPI or the average increase in the PLA charges for goods dues, whichever is the lower. Licences also refer to the arbitrator under section 67 of the Act if there is failure to agree the sum or the licensee objects.
Reviews	In some licences the details of reviews are not specific but are effectively covered by the term quoted above; some state, <i>‘The PLA shall from time to time notify the licensee in writing of the amount it considers represents the proper consideration for this licence.’</i> Some licences specify a particular review cycle; for others the PLA have adopted the practice of a five-yearly review cycle.
Term	Many licences are ‘open-ended’ and run indefinitely, although some specify a fixed term, often requested by the licensee in order to secure investment funding.
Use	The river works are described in the licence schedule e.g. <i>‘moorings, pontoons and gangways to accommodate residential craft.’</i> Reference is often also made to mooring a houseboat e.g. <i>‘two mooring piles and residential craft x.’</i> or, in some instances, may specify just the houseboat in the schedule. Other later licences may specify the use in a specific term of the licence. The use for residential mooring may also be referenced on the licence heading and/or application form.
Alienation	Licences state that they are personal to the licensee/not assignable. Many also state that the PLA will not unreasonably refuse to grant a new licence on substantially the same terms.
Revocation	Typically there are standard clauses relating to a breach by the licensee, plus <i>‘if the PLA shall require revocation of the licence for navigational or river regime reasons connected with their statutory duties.’</i>

Values of houseboat moorings

The 'value' of the ability to moor a houseboat on the tidal Thames is created from a combination of factors:

1. the PLA's grant of the River Works Licence;
2. the licensee securing planning permission and any other necessary consents;
3. the licensee securing land access (owned or leased/licensed – the terms of tenure and any fee will affect the overall value, along with the size and use of the land);
4. the licensee installing the river works plus any other necessary infrastructure on the river wall or on land, plus ongoing maintenance. The level and quality of infrastructure and services may affect the overall value to some extent;
5. the location (e.g. desirability, outlook, proximity to transport and services, river conditions, nuisance factors, etc.)

The licensee or their tenant/sub-licensee then moors a houseboat at the mooring, which can be a significant capital cost, depending on the size and type of houseboat.

Indicators of value

There are many different indicators of the value which is created:

- an annual mooring fee charged to sub-licensees who bring their own boat;
- a longer-term sub-licence sold for a capital sum at the outset to sub-licensees who bring their own boat. Subsequently the sub-licence is usually sold with the houseboat;
- houseboat rental – the houseboat is either rented in its entirety or it is a multi-let with multiple rooms/units let within the boat. The quality, size and location of the boat will affect rental value;
- the sale price of a houseboat on its mooring;
- the sale price of a vacant mooring.

Some examples of houseboats and moorings advertised in the last year (with various terms summarised below)²

- £346 per metre p.a. mooring fee (includes service charge) in Chiswick and £329 in Twickenham
- £310 - £375 per foot for a 5 year agreement plus annual mooring fee of £102 per foot plus annual service charge of £53.70 per foot in Chelsea
- £450,000 advertised sale price for a 110 foot barge in Brentford on its mooring
- £1,300,000 for a floating home on its mooring in Wandsworth with 2000 sq ft of internal space
- £275,000 advertised sale price for a 80 foot vacant mooring in Battersea
- £800 monthly rent for a vacant serviced mooring near Teddington
- £1,250 monthly rent for a narrowboat on a mooring near Kew

Evidence of value

In some cases, the indicator is clear e.g. a licensee's published mooring fee, although some have different approaches to pricing and choose not to charge fully competitive rates; some are trusts. In other cases, the advertised sale or rental price of a houseboat on its mooring may be known, but the agreed price is not, nor any subsequent rent reviews between the licensee and their tenant. Advertised sales/rentals occurring at any one site may be infrequent, for example only every few years or longer.

Conclusions on value

The indicators of value across just 37 licensees and 280 houseboats are very diverse. There is not always sufficient evidence of any one indicator to provide a reliable basis for the charging method. The issue is further complicated by the River Works Licence being just one element of the overall value created, albeit an essential element.

² Details were advertised on Riverhomes, The Houseboat Centre, provided to the consultants or published by the mooring operators from late 2010 to September 2011.

How other UK port and navigation authorities charge for licensing of river works

The Government expects Port Trusts, of which the PLA is one, to operate commercially. Its guidance document *Modernising Trust Ports*³ states that they should be ‘...operated efficiently and effectively, and to generate a commercially acceptable rate of return’ and to set dues ‘... at commercial and competitive rates, neither exploiting its status as a trust port to undercut the market, nor abusing a dominant position in that market.’

Like the Port of London Authority, many other navigation authorities and port trusts have either a statutory duty and/or government directive to charge commercial rates for licensing. A sample was researched to identify any relevant practice for consideration as a model. The sample included The Crown Estate, British Waterways, the Environment Agency (Thames and Medway), Dart Harbour Authority, Crouch Harbour, Shoreham Harbour, Portsmouth Harbour, Falmouth Harbour and Medway Ports Authorities.

The two largest licensors in the UK, The Crown Estate and British Waterways (BW), are required⁴ to adopt a commercial approach and they use market valuation principles.

The Crown Estate

The Crown Estate charges between 8% and 15% of gross mooring revenue for **marinas**; these rates have been established over the years through negotiation with operators and what the market can bear. The Crown Estate has negotiated licences for **moorings** (as distinct from marinas) on an individual basis over the years; reviews consider factors such as market comparables and the operator’s margins. However this case-by case negotiation is what the PLA and licensees wish to move away from.

British Waterways

British Waterways charges 9% of gross mooring revenue to marinas which **connect to** their waterways (but the boats do not occupy BW waterspace in the marina); this rate was set after dialogue with the British Marine Federation and reflects considerable cost and risk, e.g. excavation, road access and buildings, to make the marina viable.

BW charges 50% of the local towpath mooring fee for ‘**End of Garden**’ mooring agreements to canal-side land-owners whose moored boat and any works occupy BW’s canal-bed, although usually the mooring works and associated costs are negligible. The 50% charge represents an equal split of value between the land-owner and BW; it has been tested in a County Court. The End of Garden agreements usually relate to a single boat. BW’s current approach to multiple boat sites (which may have more ‘works’ and be operated more commercially) is a commercial negotiation which may use the 50% of local towpath mooring fee as a starting point and then make some reduction to take other factors such as cost into account.

Medway Ports

Medway Ports generally charge commercial **marinas** on the basis of the area of bed and soil occupied by the works and apply a price per square metre although in one instance they charge a base rent plus 12.5% of gross turnover. These are commercially operating marinas predominantly occupied by leisure boats; some of these marinas may also accommodate a number of houseboats.

Monopoly supplier issues

As with the Port of London Act 1968, the statute for The Crown Estate and also the government guidance for Trust Ports refer to the need to take account of any **monopoly issues and dominant position**. British Waterways has implemented a Fair Trading Policy which also relates to its conduct as a mooring operator in a market where it is also a licensor for other mooring providers.

³ *Modernising Trust Ports (MTP)* 2nd edition, DfT 2009 1.2.1

⁴ *Crown Estate Act 1961 S.1(3)* ‘... for the best consideration ... which in their opinion can reasonably be obtained, having regard to all the circumstances of the case but excluding any element of monopoly value attributable to the extent of the Crown’s ownership of comparable land.’

British Waterways Financial Memorandum from DETR June 2000 s.44. ‘... BW should maximise, as far as possible, revenue from its activities by charging the market rate for its services.’ and *1962 Transport Act* S.43 ‘power to demand ... such charges for their services and facilities... subject to such terms and conditions, as they think fit.’

The above review of how other UK port and navigation authorities charge for licensing of river works has shown that there is established industry practice of:

- recognising the value as being the mooring fee;
- recognising that the authority owning the port/canal/estuary bed can charge for the value of its occupation;
- recognising a split of value between authority and adjacent land-owner/mooring operator;
- charging for works as a percentage of mooring rates (or area on the Medway). The gross mooring revenue is clearly identifiable because most marinas charge just a mooring fee, without any additional up-front premium;
- taking the land-owner/mooring operator's costs into account;
- the need to take account of any monopoly issues and dominant position.

This provides comparable models and industry practice for consideration for the PLA charges because of the similar circumstances relating to ownership of river bed and adjacent land on the tidal Thames.

Environment Agency

The Environment Agency's statute⁵ refers to a '*... fair and reasonable consideration ..*' for river works. Its charges on the non-tidal Thames are currently based on the actual works (piles and pontoons) irrespective of the value of the mooring created and could not be considered as a model for best consideration. Furthermore the licensees' costs are an important consideration which standard tariffs do not take into account. The EA does not charge for river works on the River Medway, despite having the necessary powers.

Smaller port and harbour authorities

The smaller port and harbour authorities researched generally had no specified rationale for their charges (although some used market comparables for the higher-priced moorings on their waters).

Therefore this group and the Environment Agency provided no comparable or relevant practice to consider for the PLA's charging for River Works Licences. The authorities in the sample that licensed works for residential moorings included British Waterways, The Crown Estate, Medway Ports and, to a much lesser extent, the Environment Agency. The houseboats on the Crouch pre-date the Crouch Harbour Act and therefore have an exemption.

Dispute resolution for other UK port and navigation authorities

Dispute resolution for licensees of The Crown Estate is either the Valuation Office Agency or the Royal Institution of Chartered Surveyors (RICS). For British Waterways it is RICS or the Institute of Chartered Accountants for turnover rents. The BW Waterway Ombudsman can consider maladministration i.e. relating to implementation of policy and process, but cannot settle commercial matters; trade issues (which include mooring operators) are also flagged to the BW Fair Trading Committee.

Complaints concerning Trust Ports can be referred to the Department for Transport but it '*has no locus in regulating commercial decisions or activities... Its interest is in ensuring that the board does not take decisions in an arbitrary unaccountable manner.*'⁶

Clearly the appropriate method of dispute resolution depends upon the charging method. Further discussion on dispute resolution for the PLA's River Works Licences is in Part 4 of this report.

⁵ **Thames Conservancy Act 1932 S.60** '*... for a fair and reasonable consideration ... grant to any owner or occupier of any land adjoining the Thames a licence for ...: (a)...making of any dock, ... pier, jetty, wharf, bank ... immediately in front of his land and into the body of the Thames.*'

⁶ **Modernising Trust Ports (MTP)** 2nd edition, DfT 2009

Consultation with licensees and houseboat residents

In addition to the ongoing input of the three members of the Steering Group who were licensees and the member representing residential boaters, extensive consultation was undertaken with some 65 licensees and houseboat residents in late 2010 to establish their views on PLA charging and to invite their comments and suggestions. The full report of consultees' views can be found at www.pla.co.uk ("*Independent Study*" on the home page).

Key themes of their comments

- They wanted a simple, clear, reliable method.
- They raised concerns that the PLA River Works Licence charges and other costs were pushing some resident boaters and businesses to the limits of affordability.
- They had concerns over the PLA's monopoly position and use of arbitration, which can be costly and is perceived as unfair in terms of the licensees' lack of power and ability to represent themselves.

Views on charging fell into three camps

1. The commercial moorings operators each independently suggested the same method – a percentage of mooring revenue;
2. Some licensees accepted some charge for 'value' and were willing to discuss the PLA's share and offered suggestions for charging.
3. Other licensees challenged why the PLA based their charge on the **value** of river works, believing it should be based solely on the actual works installed (piles and pontoons) or a nominal ground rent. They wanted a legal Opinion on the interpretation of the Port of London Act 1968 in relation to charging. The Steering Group later obtained a legal Opinion – refer to Part 3 of this report.

Charging methods suggested

Licensees suggested a range of different methods. The suggestions for charges based solely on the works, a nominal ground rent or indexing the sum agreed at the outset by RPI are not consistent with the legal Opinion that was later sought, or comparable with the relevant practice of other navigation/port authorities. Methods suggested by the consultees which are consistent include:

- A percentage of mooring revenue was suggested by five of the more commercial operators which they felt would be a fair approach and take differences such as mooring fees and costs across sites into account.
- using the mooring fees charged by commercial sites as comparables to derive a notional mooring fee for individual houseboats/non-commercial operators, because this reflects the notional value of their mooring.

The other key points made by the consultees in relation to charging are summarised below:

1. Their costs varied significantly between them, depending on their specific arrangements such as land access and tenure, installation and maintenance of river works. Their costs influence the value of their mooring and hence ability to pay the RWL, but have no relation to the amount charged for the RWL.
2. Views differed on whether gross or net value should be considered, especially given the variation in costs, but there was a desire for consistency.
3. When boats are sold on their moorings, there are big variations between prices due to location, land access, mooring and the boat itself. Licensees believed there are insufficient transactions to provide robust comparisons and the element in the price relating just to the river works cannot always easily be isolated.

4. There was some support for a difference between charges based on location e.g. more desirable London areas, or river-related conditions.
5. There was some support for charges based on metre length or area of houseboats, but not volume (i.e. multiple storeys) since they felt it would be complex to identify actual living space.
6. There was no support or rationale identified for treating houseboats moored individually differently to multiple houseboat sites (enclaves).
7. There was concern that the higher rental income believed to be earned from large multi-tenanted houseboats might pull up charges for others; a 'commercial' RWL was suggested to reflect the different nature of those operators.

Views on dispute resolution

Many felt that if the charging method were clear and fair, some of the current issues should fall away and arbitration would be less likely. Dispute resolution needed to be speedy, accessible and inexpensive, a process which all sides can trust. Licensees believed that the PLA must agree to be bound by independent decisions (this is addressed further in Part 4).

Suggestions included something equivalent to rent tribunals, mediation, an ombudsman or equivalent; costs could be covered by a central fund created from a 'top-slice' of RWL fees, but the process must not be too freely available (to avoid misuse or unnecessary referrals), for example the licensee pays three months of their current charge.

There was also support for a 'charter' which sets out a timetable, information required and the likely fees for both sides. It would be a two stage process which (1) checks that the PLA have followed the published method, and (2) goes to further mediation relating to the amount.

Clearly the appropriate method of dispute resolution depends upon the charging method. Further discussion on dispute resolution for the PLA's River Works Licences is in Part 4 of this report.

Review of the responses to the PLA's public consultation on charges for River Works Licences in 2006

In 2006, the PLA consulted on charging options for its River Works Licences for individual licensees (not 'enclaves'). The paper referred to the practice of BW, EA and the Crown Estate, along with reference to an alternative Dispute Resolution Panel.

The three charging options assessed were:

1. Decapitalisation of sale prices (value of boats sold on the open market) but the PLA ruled this out due to the significant variations in values.
2. Relation of the River Works Licence fee to an analysis of the Community Charge, but the PLA ruled this out due to inconsistent data relating to houseboats and the Community Charge, and therefore insufficient correlation with value.
3. The consideration for houseboats at licensed moorings let on the open market would be 16.66% of the annual rent (plus any premiums) passing. For houseboats not let, evidence would be derived from open market lettings to provide comparables. The 16.66% is based upon one-third of the rental value for the riparian owner, with the PLA receiving 25% of the remaining two-thirds i.e. 16.66%. This was the PLA's preferred option.

Key themes from the 37 consultee responses

- The majority opposed charges based on rental or sale of the houseboat itself because the PLA's interest relates solely to the river works, not the houseboat. They were also concerned about the great variation in rental and sale values, which would not provide a robust evidence base.

- There was a strong aversion to comparisons with land-based property and valuation methods.
- Where respondents referred to charging, many expressed some level of support for using the length of mooring and the location as a basis. Views on using the boat's length or area were evenly split.
- AMO (Ancient Moorings Organisation) and RBOA (Residential Boat Owners' Association) supported by at least four others, jointly proposed using a local mooring rate multiplied by the mooring length, with deductions of operating expenses, service charges and one-third for the riparian element, with the PLA to receive an agreed percentage (unspecified) of the remainder.
- Some licensees believed that the PLA's share should be a small element of the overall value, saying it merely granted a right to occupy space over its river-bed.
- Two of the three chartered surveyors who responded proposed a percentage of mooring fees.

Conclusions from the responses to the consultation in 2006 and initial consultation in 2010

There is likely to be some support for:

- charging commercial operators a percentage of mooring revenue;
- charging others based on a notional mooring fee, boat length/area, plus location differences;
- applying a different charge for the commercial letting activity of large multi-tenanted houseboats, provided the operation is easily/openly identifiable;
- any reference to sales values must relate solely to the mooring/river works element, not the boat;
- taking some account of the licensee's costs;
- the charging method must be SIMPLE.

Legal Opinion from Robin Purchas QC

During discussions with the licensees, concerns were raised about the PLA's interpretation of the Act in its approach to charging. In response, and to provide a firm basis for this review, the Steering Group sought an independent legal Opinion from a QC specialising in this field of law. The group jointly developed a brief and agreed the choice of barrister.

Contributions towards his costs were made by OPLAC and RBOA in addition to the PLA. (The PLA also paid for OPLAC and RBOA's choice of legal representative whilst the group developed the brief.)

All members of the steering group agreed to accept the Opinion for the purposes of this review, except two of the members representing OPLAC who agreed to accept it up until the start of the public consultation.

The full brief to the barrister and his legal Opinion can be found at www.pla.co.uk ("*Independent Study*" on the home page). Some points were concerned with issues such as the definition of 'river works', the PLA's land ownership and the relevance of The Human Rights Act. A summary (provided by the consultants, not the barrister) of the points specifically relevant to charging for river works licences is below, although is not intended as a substitute for the legal Opinion itself.

1. The River Works Licence authorises the licensee to **install and maintain river works**, and there is an implied **right to use the works and enjoy the benefit** i.e. as a mooring.
2. The terms of the licence, including its period, renewal or any review of the consideration, must first be determined, then the consideration should be agreed. Failing agreement, it is referred to an arbitrator and the provisions of the Act **require the consideration to be:**
 - the best consideration in money or money's worth
 - which can reasonably be obtained, having regard to
 - all the circumstances of the case, including
 - the value of any rights in, under or over PLA land deemed to be conferred by the licence but
 - excluding any element of monopoly value attributable to the extent of the PLA's ownership of comparable land.
3. In summary there is therefore an underlying objective in the provisions of section 67 of the Act requiring the PLA to charge **best consideration** meaning '**best in monetary or commercial value**' that can '**reasonably be obtained**'. The PLA can take account of the benefits and the value derived from the licence and must take account of all relevant circumstances of each case, but cannot exploit its monopoly position as sole supplier of River Works Licences.
4. The phrase '**reasonably be obtained**' is a qualification of best consideration and requires the PLA to have regard to what is reasonable in all the circumstances identified. The consideration is what, 'in the circumstances of a commercial negotiation between river conservator and licence applicant, could reasonably be obtained' but it must not detract from the underlying obligation to charge the best in monetary or commercial value.
5. The charge must **exclude any premium arising from the monopoly ownership** of the PLA – it is in a position through its ownership where potentially the level of consideration could be forced up because of the absence of any other provider. The consideration should be assessed as if the relevant stretch of the river is in multiple ownership so that it will reflect the overall demand and supply of mooring opportunities without distortion through the PLA's ownership.

6. When assessing the consideration, there is a range of **circumstances** to be taken into account including:
- a) the **starting point is the general market value** of the right granted, i.e. one 'generally reflecting the market value for the mooring in the particular location in which it is situated,' the potential considerations for market evidence being:
- **Fees for houseboat moorings** as the prime comparators.
 - The **prevailing level of market rents** for mooring locally and generally.
 - **Supply and demand** of mooring opportunities.
 - **Previous settlements** or their tone (i.e. level or trend) with the PLA, but it is important to understand the particular context and specific circumstances of each case to make any relevant comparison, and whether the level of settlement agreed might have been influenced by the threat of arbitration costs if settlement is not achieved.
 - The **sale price** (which is more relevant than an advertised price) if it is possible to determine the element paid for the benefit of the River Works Licence.
 - **Mooring fees for houseboats on other waterways** could be relevant but subject to adjustment for location and other factors including whether a boat licence cost has affected the amount paid for a mooring.
 - **Local land rentals** could potentially be relevant as part of the market context but the prime comparators would be licence fees for houseboat moorings.
 - **General location** on the Thames and **site-specific factors** such as desirability, proximity to transport and services, river conditions, any nuisance factors etc.
 - The charge can be based on the **potential of the mooring** and the income that could be derived, provided realistic assumptions are made about the use, demand and value. Therefore the charge would not necessarily be based on the *actual* use if the use does not reasonably reflect its potential, for example if the works were left empty.
 - **major changes** occurring after the date of grant, but before the review date.
- b) The licensee's costs including
- Cost of obtaining **planning permission**
 - **Capital** cost of installing the river works
 - The likely **outgoings** such as maintenance and other costs of achieving value i.e. it is the **net value**.
 - Costs for **securing land access** to the mooring
- c) Other considerations include
- The **specific terms of each licence** being assessed since there may be particular conditions which might affect the assessment.
 - The **scale of any increase in the consideration** – if it is significant, for example because there has not been a review for a number of years or the licensee has made substantial investment, then it may not be reasonable to obtain it immediately following the review, and an approach deferring or phasing the increase may be more appropriate.
 - The **basis for the charging** could be by boat length, width or volume if appropriate.

d) Circumstances which would not generally be regarded as a reasonable basis for determining the consideration include:

- A licensee's **personal circumstances** and their period of occupation would generally not be relevant, although if faced with hardship because best consideration represents a significant increase then there may be scope for phasing in the increase as a 'proportionate' approach.
- The **actual use** made by the licence holder where that does not reasonably reflect its potential.
- The particular quality or fittings of the actual **houseboat** moored or proposed to be moored
- The **PLA's costs of administration**.
- The fact that the licensee **owns the adjoining land**.

The legal Opinion has provided many answers to the issues raised by licensees at the outset and during consultations. Most importantly it has provided a firm basis for this review and the recommendations in Part 4 of this report.



Hermitage Community Moorings, Wapping (courtesy of HCM)

Context for the proposals

The earlier sections of this report have provided the context for the proposals. The main points from these earlier sections are summarised below. They include the key issues, reference points and certain parameters which have helped to inform and shape the recommendations.

Current River Works Licences for residential use, mooring arrangements and values

- There is a relatively small number of River Works Licences for residential use on the tidal Thames – a total of 37 licences clustered in 12 areas, accommodating c. 280 houseboats which vary in size from narrowboats and barges to two storey floating structures. Land access agreements and costs vary significantly from ownership to leases/licences.
- But within the number of River Works Licences there are very different arrangements. Half the licensees are individual owner-occupiers or rent out one or two boats, or an empty berth. Others have bought a long sub-licence for a premium, or a share-holding, and a few operate multi-tenanted large houseboats. Only a few commercially operated sites charge an annual mooring fee.
- The indicators of value are very diverse. There is not sufficient evidence of any one indicator to provide a reliable basis for the charging method, particularly as the River Works Licence represents just one element of the overall value created, albeit an essential element.

The context for works licensing and practice of other UK port and navigation authorities

- The Government expects Port Trusts, of which the PLA is one, to operate commercially. Some of the main UK navigation authorities charge for river works (or equivalent) as a percentage of the operators' mooring fees, recognising a split of value between the authority and adjacent land-owner/mooring operator and taking account of costs whilst also having regard to the authority's monopoly position.
- Dispute resolution for licensees of The Crown Estate is either the Valuation Office Agency or the Royal Institution of Chartered Surveyors (RICS). For British Waterways it is RICS or the Institute of Chartered Accountants for turnover rents, along with the option of the Waterway Ombudsman in relation to maladministration but not for settling commercial matters; trade issues (which include mooring operators) are also flagged to the BW Fair Trading Committee.

Conclusions from consultations in 2010 and 2006

There is likely to be some support for:

- charging commercial operators a percentage of mooring revenue;
- charging others based on a notional mooring fee, boat length/area, plus location differences;
- applying a different charge for the commercial letting activity of large multi-tenanted houseboats, provided the operation is easily/openly identifiable;
- any reference to sales values must relate solely to the mooring/river works element, not the boat;
- taking some account of the licensee's costs;
- the charging method must be SIMPLE.

Key points from the legal Opinion

- The PLA is required to charge best consideration meaning ‘... *best in monetary or commercial value...*’ that can ‘... *reasonably be obtained...*’ The PLA can take account of the benefits and the value derived from the licence and must take account of all relevant circumstances of each case, but cannot exploit its monopoly position as sole supplier of River Works Licences.
- The assessment is ‘... *one generally reflecting the market value for the mooring in the particular location in which it is situated...*’ Potential market evidence includes houseboat moorings fees as the prime comparators, prevailing level of market rents for mooring locally and generally, and supply and demand.
- Relevant evidence also includes agreed sale prices where the element paid for the mooring/River Works Licence can be identified, houseboat mooring fees on other waterways (subject to adjustment for location and other factors) and, possibly, previous settlements with the PLA.
- The charge can be based on the reasonable *potential* of the mooring and the income that could be derived (if the *actual* use does not reasonably reflect its potential).
- A site’s location on the Thames and site-specific factors such as desirability, proximity to transport and services, river conditions, any nuisance factors etc. must be considered.
- The licensee’s costs must be taken into account, including setting up and installing the river works, outgoings such as maintenance and securing land access.
- The basis for the charging could be by boat length, width or volume if appropriate.
- If the scale of any increase is significant then a phased approach may be more appropriate.



Ice Wharf residential moorings, King's Cross, Regent's Canal

Charging options

A range of options for the charging method have been identified and assessed during this review, some of which were suggested by licensees during initial consultation or were previously considered by the PLA. They are summarised and assessed below. The first option is the proposed method, which is explained fully in the next section of this report.

1. A share of net mooring revenue. Where mooring fees are not charged or not market-based, a notional fee is applied.

THIS IS THE PROPOSED OPTION WHICH IS EXPLAINED IN THE NEXT SECTION OF THIS REPORT

This approach provides a clear formula with adjustments for local circumstances. Being based on open market evidence (published commercial mooring fees), it is easily monitored and validated. The approach is equally applicable to all licensees, despite the great variety of mooring arrangements.

It conforms to the legal Opinion, which states that, when assessing best consideration, the prime comparators would be mooring fees for houseboat moorings in the locality.

It concurs with suggestions from a number of licensees during consultations in 2010 and in 2006, and is also established industry practice among some of the main UK navigation/port authorities.

2. Based on houseboat rental evidence

This was the PLA's preferred method as set out in their 2006 consultation paper.

They proposed that the River Works Licence fee should be at 16.66% of the actual or notional annual market rent for the houseboat itself. Where a houseboat was actually let, the proposal was to use that rent (ex VAT). In instances where the houseboat was not let, the proposal was to calculate a notional rent by reference to houseboats let in the vicinity.

The 16.66% was derived by deducting one third of the full rent (to reflect value to the riparian owner) and then apportioning 25% of the remaining two thirds i.e. 16.66% to the PLA.

There are some merits to this approach; it is a clear formula, based on valuation principles and open market evidence. The PLA had recognised land access costs, licensees' costs and the value of the houseboat.

However there are some drawbacks. The rental evidence may vary considerably depending upon the size, quality and specific location of each rented houseboat, and the necessity to make appropriate adjustments to derive a comparable rental value for no-let houseboats. There is not a sufficient spread of let houseboats along the river. The evidence available is the advertised rental prices and therefore a less accurate reflection of value than actual agreed rents would provide. It is also a difficult exercise to isolate and quantify the element in the package relating to the River Works Licence, although the formula provided a reasonable estimation.

There was strong opposition to this approach from licensees in 2006 for the above reasons and it is unlikely to gain support during this review.

Whilst the legal Opinion does not rule out the use of rental evidence, the barrister's view was that advertised rental or sale prices are of less evidential value than those agreed or achieved. His opinion is that the prime comparators would be mooring fees for houseboats in the locality.

3. Based on houseboat sales values

It is expected that a houseboat sold on its mooring would achieve a premium above the value of the houseboat alone. In some cases this is significant. Available evidence supports this conclusion.

It should be possible to deduct the value of the houseboat from the capital sum (using a boat survey valuation) with the remaining amount including elements for land access, location and river works licence. Where sufficient details are known by the PLA, it could be possible to decapitalise this sum and derive an annual charge relating to the river works licence, but clearly this can only be done on a case-by-case basis where all the facts are known.

This approach does not provide a robust basis for deriving the annual charge for **all** licensees because, as with rental evidence above, there will be significant variations between sales prices. Factors such as location, tenure of the land and any specific terms of the river works licence will affect the values. Only advertised prices will normally be known, not actual prices, and it is anticipated there will be insufficient transactions to provide a meaningful analysis.

It is however open to both parties (the PLA and prospective licensee) to structure **new** River Works Licences in such a way as to identify a mooring premium, and agree a suitable share for each party.

4. A minimal share of the value, like a ground rent for the use of the PLA's riverbed because they do not provide services, own access, incur costs or risk, nor do they maintain the riverbed where the boats sit

By licensing the river works, the PLA is enabling value to be created, and as freeholder of the land (i.e. the river bed), they are entitled to a share in that value, therefore only a minimal share is not appropriate. The appropriate share, and the structuring of any payments for the share of value, is determined by the strength of the different parties creating that value, and is a matter of valuation.

Making a commercial charge (for the use to which a riverbed is put) is also established practice among navigation/port authorities, and in the case of British Waterways' End of Garden Moorings, has been tested in court.

The legal Opinion has confirmed that the charge is to be best consideration reasonably obtainable and that there are a range of circumstances to be considered as part of the assessment exercise.

5. Charges per pile and length of pontoon

6. A fixed rate 'menu' of charges for the river works themselves

These are two similar options.

The barrister was asked whether the PLA could make separate charges for (a) the works themselves and (b) the use to which they are put. His view was that the assessment could comprise a *'basic cost for the works and a variable element for the use permitted to be made of them; however the consideration would in the final analysis remain the best consideration reasonably obtainable for the licence as granted including the potentiality of the use to which the mooring could be put.'*

Therefore charging for the river works **alone** does not take account of the value of their use as a mooring. It also fails to take account of other potentially relevant circumstances such as location.

Furthermore it would be a complex task to isolate and quantify the appropriate charges for the river works element.

7. Charge a standard fee to all houseboats for the residential occupation of the riverbed

This option is too general an approach and does not take all relevant circumstances into account, as required by the PLA Act.

8. Charge for the services provided to licensees by the PLA – like Council Tax – or for covering the PLA's costs of administering River Works Licences

The barrister was asked whether the PLA's broader costs of administering the river or simply the river works licensing regime were relevant circumstances. His view was that the assessment is for the grant of the licence (and is to be the best consideration reasonably obtained) and in these circumstances, the cost of administration would not act as a limit or control.

Therefore the PLA's costs are not an appropriate or suitable basis for setting the consideration.

- 9. Value the licences using updated figures from before 1995; set an amount per square metre of boat; apply this figure equally to all licence holders; then index fees in a conventional way to aid future planning**
- 10. The charge should relate to the amount originally agreed at the outset (and upon which investment decisions were made) – then simply inflate to the current value of money**

Two similar options.

Most licences refer to an annual sum *'from time to time agreed or assessed in accordance with the PLA Act 1968 s.67'* and therefore reviews of the assessment are to be expected.

The legal Opinion has confirmed that the charge should reflect the value of the grant of the licence and can take account of changes occurring after the date of grant.

Therefore it is not appropriate to link the current charge to the fee paid when the licence was originally granted, or simply to index former charges, since neither will reflect current value.

11. Site-by-site negotiations to deal with all circumstances

This is the current approach which all parties agree is unsatisfactory, hence this review to find an alternative.

Proposed Charging Method for River Works Licences for Residential Use

One third of actual net or notional net mooring revenue

The mooring fee to use in the formula above will depend on the type of licensee:

- Where competitively priced mooring fees are charged by a licensee, the **actual** annual mooring fee is used
- Where mooring fees are not competitively priced, or charged at all, a **notional** annual mooring fee is applied
- Large multi-tenanted houseboats derive value from **letting/room rental** which is considered as the revenue

The deduction for costs is 15% (from actual or notional gross mooring revenue)

The cost deduction for large multi-tenanted houseboats is subject to individual assessment

In summary, there are four stages to this formula for deriving the River Works Licence charge:

1. Determine the actual annual mooring fee or the notional annual mooring fee:

The notional London-wide mooring fee is derived from a range of commercially operated residential sites across London, which is then adjusted for each site by:

Locational weighting

Any site-specific factors



2. Apply the actual or notional mooring fee to the boat(s) moored at the site or to the lettable mooring space (if this better reflects the site's reasonable potential)

Apply the boat width factor

This provides the gross mooring revenue (actual or notional)



3. Deduct 15% as the costs for maintaining/repairing the river works/moorings from gross mooring revenue

The rate of 15% applies to every licence (except for large multi-tenanted houseboats)

This provides the net mooring revenue (actual or notional)



4. The net mooring revenue is shared between the three interested parties:

(1) Licensee (2) Land-access owner (3) Port of London Authority

Thus the PLA's share, and hence the charge for the River Work Licence, is one-third of the net mooring revenue.

Each element of this 'formula' is discussed below:

Actual annual mooring fee

The main reliable, clear indicator of the value of a mooring is the annual mooring fee charged by a licensee.

Mooring fees are charged by an estimated nine licensees accommodating c.150 houseboats (around half of all houseboats on the tidal Thames). A few operators set competitive prices which reflect market value and therefore provide the basis for the charging formula to achieve best consideration. Others have a softer approach to mooring pricing or may be unwilling to disclose their charge.

The legal Opinion is that the River Works Licence charge should be based on the reasonable **potential** of the mooring if the **actual** use does not reasonably reflect the income that could be derived. To determine whether an operator's charges should be used as the basis, the notional mooring fee would first be derived for their site as a benchmark for the reasonable potential fee that could be charged.

If their charges were above the notional mooring fee, or up to 13%⁷ below the notional fee, then their actual mooring fee would be used. If their charges were less than 13% below the notional fee then the notional mooring fee would be applied. For example the notional fee for a site is £300 per metre. If the operator charges more than this, or their fees are between £300 and £261 (£261 is 13% below the notional fee of £300) then their actual charges would be used. If their charges are under £261 then the notional fee is used as the basis.

Revenue earned **in addition** to mooring fees may also be admissible, but would need to be identified and agreed on a case-by-case basis. An understanding of the purpose of any upfront payment would determine its relevance, for example a mooring licence may effectively be an additional fee for mooring and some of the commission on houseboat sales relates to the boat value, not the mooring.

Where service charges are made, the elements within the charge were found to vary between licensees. On some sites it is not necessarily entirely cost-based, on others it covers all maintenance costs, whilst on others it includes the PLA River Works Licence fee. Therefore in order to avoid an inconsistent and hence unfair assessment, the simplest approach is to combine the licensee's mooring and service charges to identify the total fee payable by the boater. This is the fee that will be used to derive the gross mooring revenue from which 15% should be deducted for costs, and not the service charge (see 'Costs' section further on).

⁷ When the notional mooring fee was applied to the three main commercially operated sites on the tidal Thames, the resulting rates were within 2% and 21% of their charges (although the site with the 21% differential has provided different rates over the year of the review, one of which was within 11% of the notional mooring fee. Therefore 13% is considered a reasonable margin.

Notional annual mooring fee

A **notional** annual mooring fee would be applied where annual mooring fees are not competitively priced (see above) or not charged at all, i.e. to the 12 single licensees who live on their boat at the mooring (a third of all licensees), share-holdings, those on long sub-licences and those renting boats (other than commercial multi-tenanted boats). Theoretically any individual could remove their houseboat and rent their mooring on the open market.

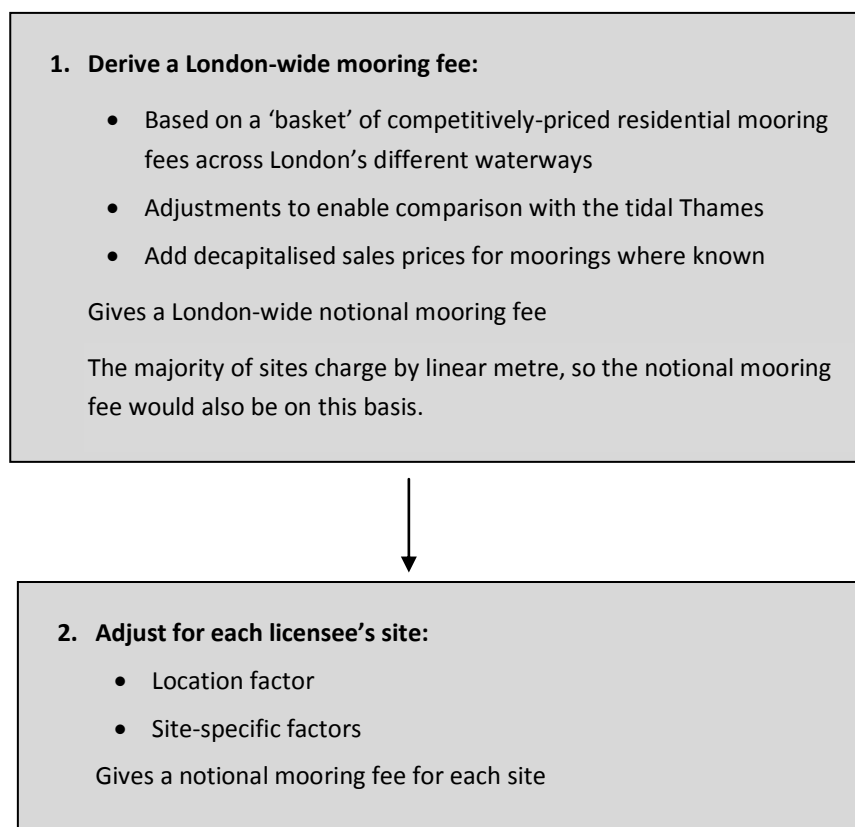
This approach of a notional mooring fee was proposed by some licensees during the recent consultation and also in 2006.

In order to provide an estimation of the potential market value that could reasonably be achieved, the notional mooring fee must be a proxy market rate and therefore based on competitively-priced mooring fees (rather than an average of *all* mooring fees including those not competitively priced).

This issue has previously been addressed in the several existing licences where the charge is based on the licensee's mooring fees, for example, the relevant condition in the River Works Licence states: '*... mooring fees... which might reasonably be expected to be licensed on the open market... and with regard being had not only to licence fees, rents and other charges being paid at the [site] but also to open market licence fees, rents and other similar charges being paid for other residential moorings.*'

Deriving a licensee's notional mooring fee

The steps to deriving a licensee's notional mooring fee are below:



This process is explained below:

1. Deriving the London-wide annual mooring fee

The 'basket' of competitively-priced residential mooring fees across London

There are too few licensees on the **tidal** Thames charging competitively-priced residential mooring fees to provide a suitable proxy market rate. Therefore a broader sample has been taken from the tidal and non-tidal Thames, canals and docks within London, totalling 22 sites, where fees are published or openly disclosed. This is a reasonably sized sample to provide the basis for the notional mooring fee, although two rates in the basket which lie far outside the range have been excluded to avoid skewing the result.

Adjustments to enable comparison with the tidal Thames

Within the basket is a diverse range of sites on the different waterways in London. In theory one cannot simply use the fees for residential moorings on a different waterway as the basis for the proxy market rate for the tidal Thames without any adjustment. For example, one would expect the fees on the canals to be lower to reflect a more enclosed setting, greater proximity to public activity on the towpath and passing boats, along with restricted boat size, although the water level is constant. In comparison, the tidal Thames is arguably the preferential waterway (despite a more challenging river environment where boats are subject to grounding) and one would expect the mooring fees to be higher.

However it is a complex and potentially subjective exercise to isolate and quantify the degree of difference between waterways to make any adjustment, particularly when the mooring fees reflect many other factors such as location, so no differential based purely on the type of waterspace has been made.

One factor which is known, however, is the boat licence fee on British Waterways and Environment Agency waters. This is an extra cost payable by the boater for occupying waterspace compared to the tidal Thames and therefore should be factored into the analysis. The rationale is that boaters have to make a provision for the boat licence fee when considering the amount they are prepared to pay for a mooring, and thus the market rates for mooring will effectively incorporate a deduction for the boat licence fee. (In other words, the cost to moor on those waters is the combined total of the mooring fee and boat licence fee, whether or not the houseboat cruises.)

The BW annual boat licence of £803 for a 20 metre boat equates to £40 per metre. The EA annual boat licence is £15.66 per square metre, of which houseboats pay 50%. The licence for a 20m x 3.7m boat is £1159 which equates to say £29 per linear metre (allowing for the 50% discount).

Another factor affecting the price of each site in the basket is its location in London. Some sites command high rates for their location, such as King's Cross or Chelsea. The option of making locational adjustments to sites in the basket of commercial mooring fees was tested, but did not yield meaningful results because there were also other factors influencing the price. On balance, it was felt that location was effectively 'neutralised' by the broad range of locations within the sample, and by excluding the two sites which lay far outside the price range.

In summary, the London-wide fee is derived from a broad range of commercial sites across London; the only adjustment to sites in the basket is the inclusion of BW and EA boat licence fees. Whilst no adjustment can feasibly be made for the difference between waterways, one would expect mooring fees on other waterways to be generally lower than those on the tidal Thames. This is borne out by the resulting London-wide fee corresponding to a lower-end commercial rate for a site on the tidal Thames because it is derived from a basket of sites which are mostly located on other waterways.

The London-wide mooring fee is **£336** ex VAT per metre per year.

The table listing the mooring sites from which it has been derived is in Appendix 1.

Decapitalised sale prices

Sometimes a **vacant** mooring is advertised for sale and, in such cases, it may be possible to decapitalise this figure to derive a notional annual mooring fee. This will rely upon the actual sale price being known (rather than the advertised price) and also identifying other elements which may affect the value. This may be possible since details are usually specified in the sales information.

Where the PLA can demonstrate how it has reliably derived an annual sum which equates to a notional mooring fee, these cases could be included in the 'basket' to provide other 'reference points' of value on the tidal Thames in addition to market-based London mooring fees. However, care must be exercised to ensure that **only** the value attributable to the mooring has been identified and the analysis should be published along with the list of mooring sites in the basket and their charges.

2. Adjustments for each licensee's site

One standard rate for all is too general and will not take account of the difference in value between the sites.

Location

The aim is to establish differences in value between the mooring locations on the tidal Thames, considering aspects such as desirability/attractiveness of the area, transport, shops and amenities. Different methods were considered since there is no suitable data to provide weightings relating specifically to mooring locations. Options considered are below:

1. Rental evidence of land-based property or houseboats was considered too variable to provide meaningful location differentials, and would require regular monitoring and analysis.
2. Differentials were developed by the consultants with an experienced estate agent who has specialised in houseboat and mooring sales in London for many years (Riverhomes). They took particular account of the characteristics of the mooring location and were therefore more specific, but nevertheless subjective.
3. Borough property price indices were considered too general and online property valuations too case-specific.
4. Analysis of the sales price differentials between selected 2 bedroom houses in the roads nearest each of the residential mooring locations did not yield a sensible set of differences.
5. The London Property Watch Index www.londonpropertywatch.co.uk is based on good sized samples of asking prices for houses per postcode. The site uses advertised prices (not actual sales prices) but any difference should be reasonably consistent across postcodes. The differentials between 2-bedroom⁸ property prices were found to be similar to the consultants' and estate agent's suggested weightings, although there is less of a range. They therefore are more reflective of the area, which is of benefit since the specific mooring location is taken into account using site-specific factors (see below).

Since this data is openly available, easily monitored and provides reasonable differentials, this is the recommended source for the geographical weightings. Day to day, there will be some slight variations in the weightings because the samples will be updated as properties come on to the market. Therefore the weightings used for the formula should be sought on the same day each year, say 1st June when the property market is more active compared to other times e.g. January. The PLA should confirm the day in advance so that the values are open to validation. If for some reason any of the sample sizes were small, then a sensible average should be derived by excluding any property values lying far outside the norm for the sample.

Potentially London Property Watch may cease to operate in the future. It is anticipated that similar sites would take its place or that a suitable alternative could be sought. Details of the values for the mooring location postcodes on 18 July 2011 are shown in Appendix II and have been used as the basis for location weightings.

⁸ The one-bedroom property values were based on small samples and the values varied considerably within the samples; three bedroom properties resulted in inconsistencies which could only be explained by excessively high value enclaves.

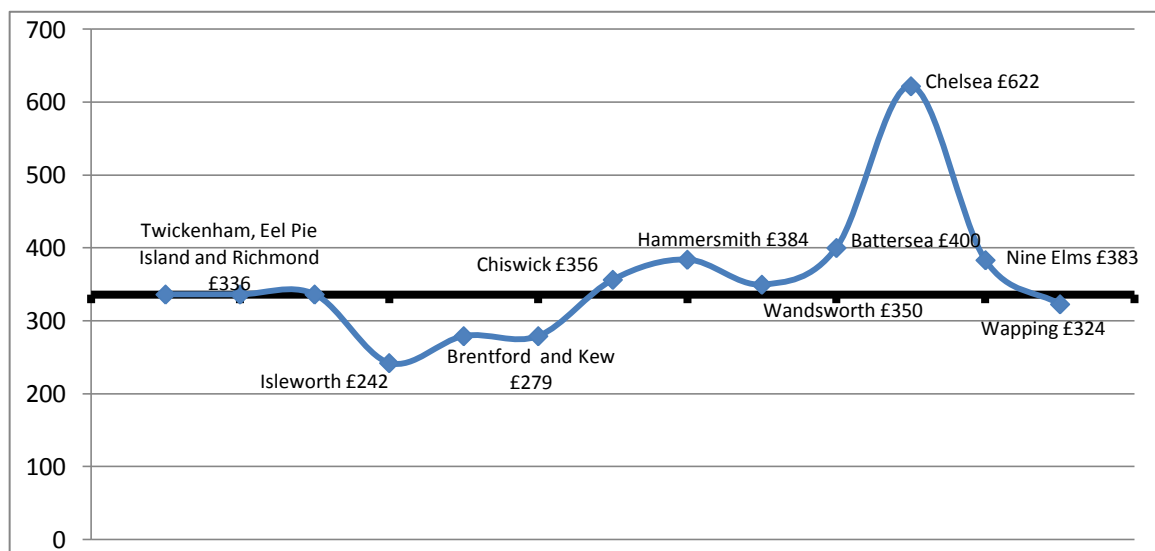
Notional annual mooring fee for each location per metre per year ex VAT

The results of applying the weightings to the London-wide notional mooring fee of £336 for each location are shown below:

Postcode	Locations	Weighting	Notional mooring fee for the location i.e. location weighting x £336
TW1	Twickenham	1	£336
TW1	Richmond	1	£336
TW7	Isleworth	0.72	£242
TW8	Brentford to Kew Bridge	0.83	£279
W4	Chiswick	1.06	£356
W6	Chiswick Mall to Hammersmith	1.14	£383
SW18	Wandsworth	1.04	£349
SW11	Battersea	1.19	£400
SW10	Chelsea	1.85	£622
SW8	Nine Elms	1.14	£383
E1W	Wapping	0.96	£323

For example if Twickenham is 1, Hammersmith would be 14% more (1.14) and Isleworth 28% less (0.72).

To aid comparison, the notional mooring fees for each location are shown on the graph below, going from west to east on the Thames.



The thick black horizontal line is the London-wide mooring fee of £336

Note that the notional fees are shown in the graph above and not the actual fees for the commercially operated sites.

As a sense-check, the resulting notional mooring fees were found to be reasonably close to the three main commercially operated sites who charge competitive prices on the tidal Thames. The results were within 2% and 21% of their mooring fees (although the site with the 21% differential has provided different rates over the year of the review, one of which was within 11% of the notional mooring fee). Note that the notional fees are shown in the graph above and not the actual fees for those commercially operated sites.

While not a perfect model, this demonstrates that the approach achieves a reasonable estimate of notional annual mooring fees in circumstances where there are very limited comparables on the tidal Thames. It is also likely to be a stable method since the two elements on which it is based are stable:

1. The London-wide fee is derived from a large sample of 20 sites, therefore any significant changes at an individual site, or the addition of new sites, will have less impact.
2. The geographical differentials are likely to remain relatively stable, and would only change when one postcode becomes more attractive/valuable, for example by development.

Site-specific factors

While the weightings above provide the value of a site's location, there may be certain factors pertinent to a particular site which must also be considered. These will need to be agreed on an individual basis. While it is not possible or appropriate to devise a 'menu' of possible adjustments, it is important to set some principles and parameters for both the licensee and PLA.

The factors which warrant adjustment should only be those which would genuinely affect the amount someone would be prepared to pay to moor in that location. Examples of site-specific factors which could have an effect on market value include:

- noise from railway or road bridges, although this may only affect some of the boats at the site.
- disturbance/nuisance – all locations will experience some general level of disturbance or nuisance, which is a fact of living on the River and would not normally merit a discount. However there may be some sites where this is above average and is significant enough to affect value.
- restrictions relating to the mooring – some sites may necessitate restrictions on the type of boat or conditions on the access to, or use of, the mooring; this may limit potential demand and hence value, which should be taken into account.

Such adjustments for site-specific factors are already established practice between the PLA and licensees, one example being up to 10% discount for boats most affected by bridge noise at a site, then 7.5% for those boats less affected, then 5%, then zero for the remaining boats. This provides a reasonable reference point for other types of adjustment, although ultimately each one will depend upon the specific circumstances at the site in question and the degree to which it would affect market value.

While these examples indicate a potential downwards adjustment, there could be cases where the site had specific significant advantages that would increase its market value above the notional fee and hence merit an upward adjustment.

Factors which would not normally merit a site-specific adjustment include:

- Any factors which have already been reflected in the location weighting (i.e. factors which already affect a post-code area) since only factors at the actual mooring site merit any further adjustment.

Minor factors - while people can always identify some 'negatives' about the place where they live, it is necessary to take account only of the major factors which genuinely affect value.

River conditions – factors such as wash, grounding and floating debris affect all houseboats to some extent from west to east on the tidal Thames, albeit in different ways. They are a fact of living on the River and should not merit any specific reduction in the notional or actual mooring fee. During the review, no obviously quantifiable differences were identified between sites, other than sites above Richmond Half Lock which are only subject to grounding one month each year which could be considered an advantage. If exceptional circumstances can be identified which affect one site significantly more than others, they should be considered, although it will be important to identify the degree to which those circumstances would genuinely affect market value and the adjustment required (upwards or downwards).

In summary, site-specific adjustments must be those which genuinely affect value. They will need to be agreed on a case-by-case basis and clearly recorded between the PLA and the licensee, since they will be applied to the site year on year. Occasional reviews are prudent to ensure that any agreed adjustments are still applicable and to take account of any other changes arising which may affect value.

Applying the actual or notional annual mooring fee to the boat(s) on site or to the lettable mooring space

Boat length - using boats on site or potential lettable space, and dealing with gaps and voids

Licensees usually maximise occupation of the available mooring space to achieve the full potential value and greatest living space. Therefore it is a simple exercise to multiply the actual or notional mooring fee by the boat(s) in occupation once a year to derive the gross revenue. The licensee could provide a boat schedule to the PLA which could be validated if required.

On the assumption that occupation is maximised, using boats on site reflects the actual value derived and takes account of both unlettable gaps and boats which overhang pontoons (and is therefore more accurate than using pontoon length as the basis). The measurement for the boat's length should be the full length of the mooring space that is required to accommodate the boat.

Therefore it would normally include items such as bowsprits and rudders (for example this is the approach of British Waterways⁹), if the space required to accommodate the boat cannot be occupied by any other boat. If, however, the arrangement of the boats at the site is such that there can be some 'overlap' then it may not be reasonable to charge for the boat length and its 'extensions.'

Mooring voids on established sites are likely to be rare – they are not in the licensee's financial interests and most houseboats are sold on their mooring. However when a mooring site is **not** fully occupied, it may be that the licensee is not operating the site efficiently and is not achieving its reasonable potential value. In this case, it would be more appropriate to use the total lettable metres as the basis, using pontoon length as the basis instead of the boats on site.

When **new** site is created, an allowance may be needed for some voids in the early stages until berths become occupied, provided the licensee has taken a reasonable approach to timely marketing and pricing.

There are only likely to be exceptional circumstances where a mooring space is genuinely unusable and has zero market value, for example if the river works had been damaged. In such instances, it is envisaged that a supplementary or new River Works Licence would be required.

Boat width

The estimated total of 280 houseboats on the tidal Thames vary in size from narrowboats to wider beam barges and large purpose-built houseboats, some of which are two-storey.

During the initial consultation, many people said they wanted the charge to take account of the difference in boat widths, stating that a charge for footprint was fairer. There was less support for charges for more than one storey.

Several options were considered for differentiating between boat width and height, for example a 50% reduction for narrowboats and 50% surcharge for boats above 5 metres, with an extra 25% for each additional storey. While the principles were reasonable and aimed for fairness, the result was to discount and inflate the notional rate to potentially unrealistic and hypothetical levels, particularly as there was no evidence on which to base these factors.

Where the notional mooring fee is used, we are applying market-based charging principles and therefore must take note of the practice of commercial operators in respect to boat sizes. The sites in the basket used to derive the London-wide mooring fee accommodate boats with widths from 2.2 metres (narrowboats) up to 4.2 metres on the canals (with the exception of three sites which accommodate narrowboats only) and around 5 metres in the docks and non-tidal Thames. They charge a rate per metre or per berth and do **not** make any price distinction for the boat's width – the type of boat and therefore its width is a matter of choice for the boater, but they pay the same rate, regardless of width.

Therefore the notional mooring fee should apply equally to boats on the tidal Thames **up to 5 metres** wide.

⁹ 'Boat length' means the length overall of the Boat including fixed fenders, bowsprits, boarding ladders, davits including their loads, stern drives, out drives, rudders, anchors, pulpits, push pits and any other extensions fore and/or aft of the Boat. **British Waterways Boat Licence Definitions**

If, however, a site or berth can **only** accommodate narrowboats, perhaps due to restricted space arising from the site layout and/or mooring arrangement, then the berth's potential is limited, which should be reflected by an adjustment to the fee. From observation, it seems that many of the narrowboats currently on the Thames have been slotted into smaller mooring spaces. There is very limited evidence upon which to base an adjustment but from our knowledge of the market, a factor of 33% is proposed for boats under 2.4 metres wide. This is a reasonable approach in our view. There are an estimated 22 boats on the tidal Thames under 2.4 metres wide, which represents 8% of the total 280 houseboats. (2.4 metres has been used instead of 2.2 metres to allow for any discrepancies in measurements, which is to the boaters' benefit.)

In respect of boats wider than 5 metres, the notional mooring fee should be increased because the London-wide fee is based on boats only up to that width.

It is envisaged that an operator would be likely to charge more per linear metre for wider boats (which would provide greater living space) at a mooring. At the same time, the higher rate would also take into account the potential for additional storeys which are more likely on wider beam boats.

There are no operators in London that charge mooring fees for berths which accommodate **solely** larger houseboats above 5 metres wide to provide evidence required for this approach. Therefore a sliding scale would seem to be a reasonable approach to adopt which fairly reflects any additional value attributable to the widest beam houseboats.

The width factor which has been applied to the notional mooring is an addition of 10% for each additional half metre. This is a sliding scale, as shown below.

Boat width	5m	5.1m	5.2m	5.3m	5.4m	5.5m	5.6m	5.7m	5.8m	5.9m	6m	6.1m	6.2m	
Weighting	1	1.02	1.04	1.06	1.08	1.1	1.12	1.14	1.16	1.18	1.2	1.22	1.24	And so on ...

At present there is an estimated 41 boats over 5 metres wide – this represents 15% of the 280 or so total houseboats on the River.

It will be important to monitor the market for any emerging practice relating to price differences based upon boat width and height. When there are discernable and quantifiable differences, they should be factored into the formula.

In summary, the width adjustments to the notional mooring fee are as follows:

Boats 2.4 metres wide and under	A deduction of 33% if the berth is restricted and can only accommodate a narrow boat
Boats above 2.4 metres and up to 5 metres wide	No adjustment
Boats above 5 metres wide	An increment of 10% for every half metre, on a sliding scale

Costs

The proposed formula identifies the **gross** mooring revenue (actual or notional). It is recognised however that there are costs associated with achieving that revenue which need to be taken into account. Since the assessment is based upon the value of the **mooring**, only costs **directly** associated with the mooring are relevant and therefore all unrelated costs such as the actual houseboat, utility consumption, council tax and business rates (for commercial operators) are not relevant. The main types of relevant costs and the appropriate treatment are discussed below:

Capital

This is the licensee's initial capital outlay for setting up the site, installing the river works, planning permission etc. There are three parties involved in the establishment of a mooring site – the licensee, the PLA and the riparian land-owner. Each contributes an essential element to the scheme and without all of their inputs the scheme could not take place:

1. the PLA contributes the occupation and use of their river bed;
2. the riparian land-owner contributes their land comprising the riverbank access to the mooring;
3. the licensee contributes their capital and expertise.

The licensee's capital is their contribution to create the value and, as such, it is not to be deducted from the gross revenue. Equally, the capital values of the riverbed and access land contributed by the other parties are not to be deducted. (This is explained further in the next section 'Share of net value'.)

Cost of capital

Provision of the capital is not a free resource. There is a cost attached to it. The licensee has two choices in how they provide the capital.

They can either use their own money and by so doing they forego the benefit of receiving interest on it.

They also expect to recoup that capital over the expected economic life of the asset.

or

They can borrow the capital, in which case they make interest and capital repayments over the economic life of the asset.

Whichever means of funding the work the licensee adopts, this remains an element of cost that the licensee bears from part of their one third share because it is part of their contribution to creating the asset. The licensee will only consider the project worthwhile if they can, as a minimum, cover this cost of development (see Share of Net Value for further explanation).

Sinking fund

If the licensee finances the work by way of borrowing capital, they need to be able to repay the borrowed sum and also the interest. Such repayment would be structured over the expected economic life of the asset. The concept is that at the end of the economic life, when the works need rebuilding/replacing, the licensee will be in a position to finance this new capital expenditure by borrowing fresh capital and starting the whole cycle again. In such circumstances a sinking fund is not appropriate as the capital sum has been borrowed.

If the licensee has used their own capital, they need to be recompensed for using their own money. The accepted approach is to look at the opportunity cost of that money, that is the interest foregone. In this case, additionally they would need to include a sinking fund in order to recoup their capital outlay over the economic life of the asset.

The method the licensee adopts is a matter of their choice. Capital replacement of infrastructure over time is thus an expenditure borne by the licensee for which they are deemed to have made the necessary provision as explained above.

Land access

As explained above and further in 'Share of net value', the riparian land-owner contributes the use of their land for access. As one of the three essential parties, the riparian land-owner is entitled to one-third of the share of the net value created. Therefore land access costs paid by a licensee are not to be deducted from the gross mooring revenue since they are taken into account as one-third of the share of the net revenue. In some cases the licensee may also own the land. In this case they are bringing two of the three essential elements to create the moorings and are entitled to two-thirds of the value created.

Maintenance and repairs

As part of this review, costs were provided on a confidential basis to the consultants by fifteen licensees (40% of all residential licensees). This was a good sample since it covered the spectrum of mooring arrangements: individual owner-occupiers, sites with long sub-licences, commercial mooring operators and sites run on a not-for-profit basis; small, medium and large sites were all represented.

The consultants needed to make some adjustments to the information provided. For example, where costs were incurred at intervals of more than one year, they were adjusted to an annual basis. Costs which were jointly associated with activities unrelated to the residential moorings at a site were also reasonably adjusted.

As noted earlier, some licensees who charged mooring fees also made a service charge, but the elements within it varied. For example, on some sites the charge covered certain maintenance costs, whilst on others it included the PLA River Works Licence fee. Therefore any analysis which focused purely on each licensee's service charge would have been an inconsistent approach. A fair and equitable approach is therefore not to deduct the actual service charges, which were inconsistent. A standardised approach was developed which treated the combined mooring and service charges as the gross mooring revenue, from which 15% is deducted for costs (see below).

The cost of funding the capital works was also considered. As explained above (see 'Sinking Fund') the licensee has a capital cost of developing the site. This cost represents the licensee's share of the input into the overall project. As such the appropriate place to consider it is as part of the overall split of value between the parties. If the licensee is able to obtain a sufficient return on their capital for their investment and risk, then this demonstrates that a one third share apportionment to each party is appropriate. With the licensee receiving the return on their capital within their one-third share it is not then appropriate to reflect cost of capital when deducting annual running costs. To do so would double-count this element.

Maintenance and repair costs as a proportion of mooring revenue

Analysis of the cost information provided showed that, although the level of cost obviously varied due to size, efficiency and, in some cases, a few site-specific factors, there were generally common items for maintenance and repairs.

Costs from each site were then assessed against the actual or notional gross mooring revenue from that site. Where it was necessary to apply the notional mooring fee to licensees who do not rent their berth, reasonable assumptions were made about costs they would be likely to incur if they were to rent it.

The costs as a percentage of gross mooring revenue ranged from 7% to 17%, although many sites were between 10% – 12%.

It is important to take a pragmatic approach in respect to costs. It is difficult to identify a licensee's precise typical annual costs; adjustments have been necessary and it is possible that there is some small degree of understatement or overstatement in the figures.

The aim has been to derive a proxy cost rate, based on a reasonable analysis of the evidence. Therefore, in the round, the rate of 15% has been adopted. This recognises the impossibility of deriving a mathematically accurate percentage to deduct given the wide range of sites and occupations. It is considered an appropriate deduction from gross mooring revenue to derive the net mooring revenue.

The option of considering individual licensee's **actual** costs was considered. This is problematic given that licensees operate their sites in different ways. For example some use voluntary labour to undertake maintenance whilst others contract this out; some have achieved better rates for contracted works (as well as other costs incurred) compared to other licensees. Some licensees have less river work infrastructure, for example they moor alongside the river wall without the need for pontoons. Arguably their maintenance costs will be less and they may therefore benefit to some extent by the application of a standard rate. However the use of actual costs would require unjustifiably detailed scrutiny of accounts and could well result in dispute over which items are admissible and the reasonableness of the costs.

Therefore to keep things simple and avoid future disputes, it is proposed that this proxy cost rate of 15% should be used and applied to all licensees.

VAT

The issue of VAT in relation to River Works Licences and residential moorings was raised by licensees during the review; it is a complex matter. However, being the application of a tax, it is outside the scope of the review, and is a matter for the PLA, the licensee and HMRC.



Hope Wharf, Chiswick/Hammersmith

Share of the net value

There are three parties involved in the establishment of a residential mooring; each one controls an essential element to enable its creation and value to be unlocked, as previously explained (see 'Capital' section under 'Costs' above). They are:

1. the licensee, who contributes their capital and expertise;
2. the PLA, who grant the use of their riverbed by way of a River Works Licence;
3. the riparian land-owner, who grants the use of their land for access to the mooring (in some cases they may also be the licensee, or the PLA).

The project, i.e. the creation of the mooring, cannot take place without each of the three parties' input. Therefore, in concept, each has equal strength and therefore is entitled to an equal share in the net value.

In order to enter into the deal, the licensee needs to be satisfied that they will receive a fair return for their contribution. They need a return which remunerates them for the cost of their capital, plus their risk and profit, otherwise there is insufficient incentive. In the event of the licensee's investment providing an insufficient return, there could be an argument for a higher share for the licensee. This would require an adjustment to the shares of both the other parties.

The approach of adopting equal shares is based not only on case law (the 1961 Lands Tribunal case *Stokes v Cambridge* which decided that, depending on the parties' strengths, the split would be up to an equal share) but also on agreements between the PLA and licensees. It should be noted that, in *Stokes v Cambridge* each of the two parties owned land which was to be part of the development, whereas in respect of River Works Licences, of the three parties required to create the asset, only two own land. The third, the licensee, seeks to make profit from the other two parties' land by carrying out the development; they bring their capital and expertise but no land.

As an additional example British Waterways agree 50% of the local towpath mooring fee for 'end of garden' mooring agreements to canal-side land owners (see page 15). In this instance there are two parties.

There are other lower rates charged by navigation authorities, as summarised earlier in Part 3 of this report. These rates must be considered within their context, since some refer to marinas where in many cases construction costs compared to revenue are higher, and the risks involved in developing a multi-use marina are higher than those of developing residential moorings on the Thames in London.

The consultants have reviewed all of the PLA agreements entered into since the 1980s where a percentage share of the value is included in the terms. The approach and percentage adopted and agreed for new agreements from the 1980s onwards show that, as river living has become more popular and new development has taken place, the percentage agreed has increased. Of necessity these agreements have to remain confidential. However the increases identified show the following:

1980s	20% of mooring fees
1990s	25% of mooring fees
Post 2000	33% of value - this is illustrated in Agreement A below.

Agreement A was a new licence entered into within the last 11 years. The term is in excess of 50 years. It includes a provision for the PLA to receive 50% of any sums received on future disposals of berths. In addition the annual sum is reviewed to market rates on a 5-yearly cycle with annual adjustments based on the lower of RPI change or increase in charges for cargo.

These licences were freely entered into by all parties and confirmed to the consultants that the one-third share is a reasonable and viable approach.

Compared to the percentages above, the proposed formula equates to 28% of gross mooring revenue. For example:

Say gross mooring revenue = £1,000

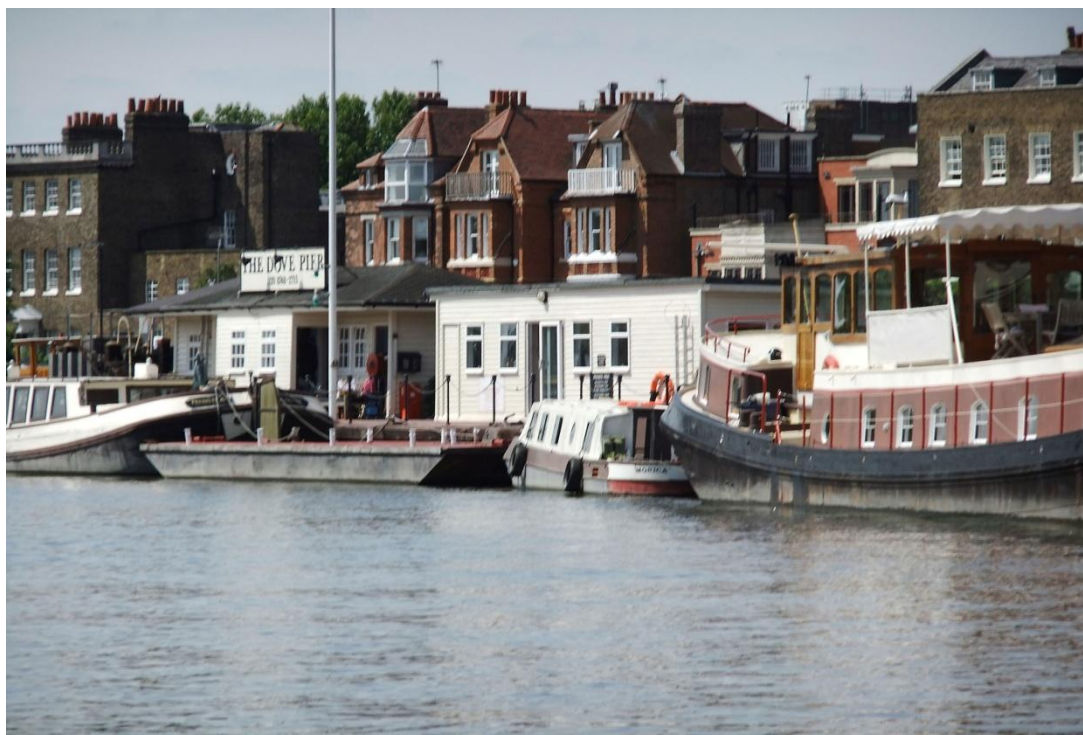
Less £150 deduction for costs (i.e. 15%) leaves £850 net mooring revenue

One third of the net £850 = £283

£283 is 28.3% of the gross £1,000

Finally, as an additional check, the consultants also constructed a model development appraisal, using construction costs provided by a leading marine supplier, the notional mooring fee with a low value location weighting and a deduction of 15% for costs. This also satisfied them that one-third of the net mooring revenue provided a sufficient return to the licensee.

The division of the value created into three equal shares reflects the status of each of the three parties as co-dependent participants in the 'deal.' It provides certainty and manages expectations between each of the three parties about their reasonable share, preventing any one taking an unreasonably higher share than the others. It provides a mechanism for the River Works Licence fees to remain the same proportion of the value of the mooring into the future.



Dove Pier, Chiswick/Hammersmith (courtesy of the owners)

Working examples

The following examples demonstrate the application of the formula. They are purely hypothetical; it should not be assumed, for example, that a site-specific adjustment would be applied to mooring sites in Chiswick.

Hypothetical houseboat in Chiswick, 20m x 4.5m, site-specific adjustment of 5%

London-wide mooring fee is £336 per metre

Houseboat is located in Chiswick, so multiply £336 by 1.06 = £356

Agreed site-specific reduction of 5% (£18) = £338

Houseboat beam is 4.5 metres so no width adjustment

Houseboat is 20 metres long so multiply £338 by 20 = £6,760 notional mooring revenue for the boat

Less 15% (£1,014) for costs gives £5,746 net notional mooring revenue

One-third of which is the River Works Licence charge of £1,915

Hypothetical houseboat in Wandsworth, 27m x 6.5m, no site-specific adjustment

London-wide mooring fee is £336 per metre

Houseboat is located in Wandsworth, so multiply £336 by 1.04 = £349

Houseboat beam is 6.5 metres so adjust £349 by 30% (three increments of 10% for each half metre above 5 metres) = £454

Houseboat is 27 metres long so multiply £454 by 27 = £12,258 notional mooring revenue for the boat

Less 15% (£1,839) for costs gives £10,419 net notional mooring revenue

One-third of which is the River Works Licence charge of £3,473

Hypothetical houseboat in Brentford, 22m x 2m, no site-specific adjustment.

The mooring space is only capable of accommodating a narrowboat.

London-wide mooring fee is £336 per metre

Houseboat is located in Brentford, so multiply £336 by 0.83 = £279

Houseboat beam is 2 metres so adjust £279 by 33% for narrowboats under 2.4 metres = £187

Houseboat is 22 metres long so multiply £187 by 22 = £4,114 notional mooring revenue for the boat

Less 15% (£617) for costs gives £3,023 net notional mooring revenue

One third of which is the River Works Licence charge of £1,008

Reviews

Regular reviews of licensees' considerations such as five-yearly assessments would no longer be necessary (unless stipulated in the licence) because the formula would be applied **each year** to determine the annual sum payable. The charge will be up-to-date since it is based on either the licensee's actual mooring revenue for that year, or the notional mooring fee, which is updated each year, whereby the PLA seeks and publishes the 'basket' of prevailing market-based mooring fees and the revised London-wide notional mooring fee derived from it. (The PLA would also need to provide information on any decapitalised mooring sale prices they propose including in the basket.)

In this way, the charge tracks market values each year (which could go up or down). It is derived from publicly available information and is therefore completely open to validation; market activity and trends can be monitored by licensees, thus aiding predictability. It is also likely to be a stable method since the two elements on which the formula is based are stable:

1. The London-wide fee is derived from a large sample of 20 sites (see Appendix I), therefore any significant changes at an individual site, or the addition of new sites, will have less impact.
2. The geographical differentials are likely to remain relatively stable, and would only change when one postcode becomes more attractive/valuable, for example by development.

The formula does not require RPI or other adjustments and there is no scope for a licensee's fee to lag behind, requiring them to catch up upon review. However in some instances the licence specifies a particular review pattern and treatment of the licence fee between reviews. The PLA and licensee are 'locked in' to these terms, although the licensee could approach the PLA with a view to varying their licence in the event that the proposed charging methodology was adopted. Periodic site-specific reviews are prudent to ensure that any agreed adjustments for site-specific factors are still applicable and to determine whether any other factors have arisen which affect value.

Review of the effectiveness of the proposed charging methodology

If the proposed charging methodology were to be adopted, it is recommended that a basic review of the effectiveness of the proposed charging method is undertaken two years after its implementation. Care needs to be taken to ensure that the methodology and each element of the formula remain appropriate. Thereafter a five year review is recommended and there needs to be a willingness from all sides to openly review the scheme. At the time of the five-year review, a suitable time period should be agreed for the subsequent review.

Large multi-tenanted houseboats

There are a few large purpose-built floating structures on the River which are occupied by multiple tenants and operated on a commercial basis. It is proposed that these multi-occupied houseboats should be defined as having three or more rooms for let (based on current information).

They effectively behave like land-based bedsits and the value created is from the room rental rather than the ability to moor. The consideration should therefore be a matter of commercial negotiation, with the starting point being one-third of the net rent (i.e. identifying gross rent and making appropriate allowances typical to letting valuations, although it will also depend on the particular circumstances of each case).

The licensee could provide the PLA with their accounts. If necessary the PLA could seek relevant evidence in order to arrive at the River Works Licence charge. Alternatively, if the licensee is unwilling to open their books, this will require the PLA to use reasonable estimates and market evidence of lettings.

New licence agreements

The proposed charging method in this review relates to existing River Works Licences where the consideration is undefined or most often is referred to as an annual sum *‘from time to time agreed or assessed in accordance with the PLA Act 1968 s.67’*. The method applies current market value to these licences, as confirmed by the legal Opinion.

For **new** licences, the PLA and licensee are free to negotiate whatever terms they mutually agree. These may be quite specific to the particular development being proposed by a licensee.



Chiswick Pier Trust

Merits of this proposal

The terms of reference required the proposals to provide a greater degree of transparency and predictability for the PLA and licensees, taking account of the Act, and which commands a reasonable degree of support from the houseboat community. The Steering Group also agreed similar success criteria along these lines. The proposals are assessed below within the context of these requirements.

Merits of the proposal

- The principles of the approach concur with suggestions from some of the licensees during consultations in 2010 and in 2006.
- It is a clear, simple formula, with simple adjustments to take account of local circumstances. Therefore the River Works Licence charge is predictable.
- It is a common formula for all despite the great variety of licensees and mooring arrangements. This enables fairness across licensees and provides scope for each individual situation to be assessed on its own merits within a consistent framework.
- It uses market-based mooring fees as the basis for the charge, which are the prime indicator of value and are set by the market with the PLA at arm's length i.e. they do not directly influence value.
- Actual mooring revenue is clear, unequivocal and easily validated; notional mooring revenue is estimated reasonably by using a London-wide proxy market rate with local adjustments.
- It is based on prevailing market values i.e. published mooring fees, which are easy for all to monitor and therefore transparent. Thus it tracks market movements (rates could go down or up) and River Works Licence charges do not need to 'catch-up' at a later date.
- The annual sum payable is always current. Periodic (e.g. five-yearly) reviews are no longer necessary.
- It conforms to the legal Opinion.
- It provides certainty and manages expectations between parties about their reasonable share of value, preventing anyone taking an unreasonably higher share than the others. Thus it provides a mechanism for the River Works Licence fees to remain the same proportion of the value of the mooring into the future.
- It is comparable with established industry practice e.g. British Waterways, The Crown Estate and Medway Ports charge a percentage of mooring revenue.
- It requires a simple annual review of published residential mooring fees across London, which is also more cost-effective for the PLA to administer.
- It minimises scope for subjective judgements which can lead to disputes.
- It provides a less formal and less costly first stage in dispute resolution which should reduce the further need for arbitration.
- It achieves best consideration (as clarified by the legal Opinion) for the PLA in a complex situation where the value of the River Works Licence element has to be 'extricated' from a combination of other factors.

Dispute resolution

The principles of the proposed formula have taken a year to develop, following consultation and engagement with all parties, and have been based on an independent legal Opinion, current UK practice and market evidence. The proposed formula is the main subject of this public consultation. Once consultation responses are assessed and if a final formula is adopted, there should be little scope for disputing the **principles** for some time to come.

By adopting a formula, the scope for dispute is much reduced with the potential areas for disagreement being:

1. The elements of the formula

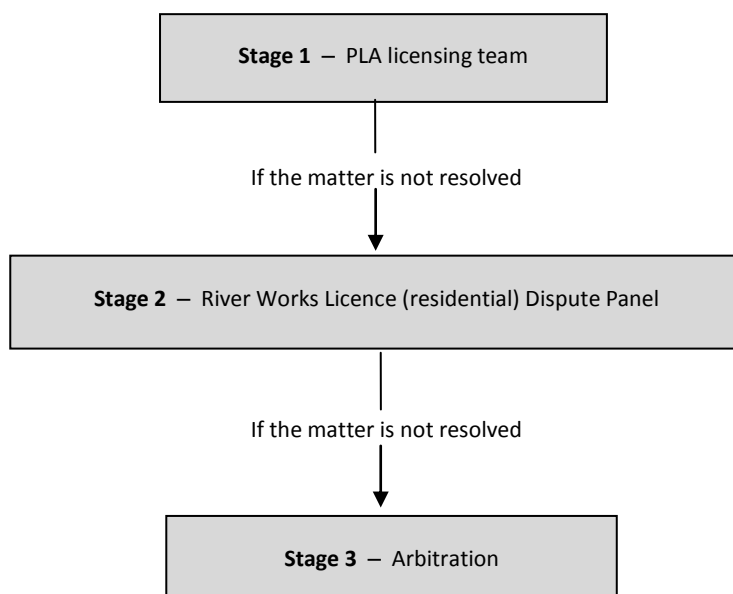
Each year the PLA will publish how it has recalculated the London-wide mooring fee, including the published rates of the operators and location weighting index that it has used. Therefore these can be easily validated.

2. The application of the formula

The PLA will need to agree any site-specific factors and adjustments with the licensee at the outset and record these clearly for future reference, and also ensure that the dimensions of the boat(s) in occupation are correct. In the case of a licensee who charges mooring fees, the PLA will need to confirm whether the formula is using their published rates or if the notional mooring fee has been applied, and why.

Dispute resolution

If a licensee disputes any elements of the formula or its application as outlined above, a three-stage dispute resolution process is proposed as follows:



Stage 1 – PLA licensing team

The licensee liaises directly with the PLA's licensing team, stating their case in writing and providing clear supporting evidence. The PLA has one month to:

- conduct a review as to how they have applied the formula to that licensee;
- consider the case and evidence put forward by the licensee;
- provide a written response which clearly states their conclusion, rationale and any action proposed.

If the matter is not resolved or the licensee is unsatisfied, they can refer the issue to the second stage:

Stage 2 – River Works Licence (residential) Dispute Panel

Both the licensee and PLA licensing team put their case and supporting evidence to the Panel, whose remit is to consider the dispute within the context of the formula and provide a decision. The Panel would comprise:

1. the District Valuer (chairs the Panel) since the disputes relate to valuation issues;
2. a senior officer, director or board member of the PLA (who is not associated with the licensing team);
3. an experienced person to represent licensees'/house-boaters' interests (but not a licensee). Suggestions are sought during the public consultation.

Arguably the Panel's work is straightforward since the areas for dispute are now limited by the formula. It is anticipated that the process of reviewing the case, convening a hearing and providing a decision should normally take one day. On this basis, the PLA has confirmed that it would fund the cost of the District Valuer, plus reasonable travel costs of the other two Panel members, assuming their time is provided on a voluntary basis.

If the Panel Chair believes the case will take longer, they would need to make suitable recommendations. They would also need to undertake a preliminary review to identify disputes which, in their independent opinion, are unsubstantiated or vexatious. In such cases there should be a pre-hearing where the Chairman would recommend terminating the process, providing clear justification. The licensee would still have the opportunity to proceed but they would be required to fund the panel's costs.

If adopted, the above principles would need to be developed into a more detailed procedure with clear requirements and timescales set out for all parties. At the time of writing, the PLA were developing a similar dispute resolution process with other licensees which could inform the development of this process, or possibly provide it in full.

Stage 3 – Arbitration

The Panel's decision cannot be binding because either party still has the right to seek arbitration as provided in the 1968 Act.

However the Dispute Resolution Panel should provide a less intimidating and more cost-effective forum than arbitration. It provides an intermediate stage for resolving disputes and providing an independent decision. It is therefore hoped that arbitration will be less likely once the matter has been heard by the Panel.

Results of applying the proposed formula

The proposed charging method has been applied to the current licences by the consultants, and the results are shown in this section. Firstly, it is important to set out the key principles used for the analysis:

1. The detailed information about each licence was provided by the PLA to the consultants **in confidence** and has not been shared with other members of the Steering Group. Care has also been taken to ensure that no site can be identified in the presentation of the analysis.
2. All licensees will receive a letter at the outset of this public consultation with an **estimate of their individual assessment** using the proposed charging method, so that they can see what it would mean for them. This will not include any site-specific factors since these would require a site visit and agreement between the PLA and licensee. The assessments are only an estimate and, if the charging method is adopted, will be subject to discussion and agreement with the PLA on an individual basis, to ensure that all circumstances are taken into account.
3. In some cases, the licence fee comprises several elements, of which the residential moorings are only one constituent. The **residential element has been isolated** for the analysis in this review, and licensees are reminded that if there are other elements in their licence fee then those charges will still also apply.
4. For all but one of the licences, annual RPI adjustments have been regularly applied on 1st October each year unless a full review of the consideration is undertaken. Since this public consultation commenced in September 2011 and will run past October 2011, the **passing consideration with effect from 1st October 2011 has been used as the current charge** against which to compare the effect of applying the proposed charge. The RPI adjustment for the year up to 1st October 2011 is expected to be 4.5%¹⁰ - this rate has therefore been applied. One licence has not been subject to RPI or any review since the fee was set in 1995 (this clearly will result in a substantial increase, given that the compound RPI adjustment for the period 1995 to 2011 is c.50%).
5. In order to correctly compare the current charge with the proposed charge, i.e. 'like with like', the analysis uses the same basis as the licensee's **last assessment**, for example the total length of boats in occupation, or the pontoon metres, *at that time* (in some cases this was many years ago). Further calculations would be required in due course, if, for example, more boats are now moored at the site. There are several licences where the consideration is based upon a percentage of mooring fees; in these cases the notional mooring fee has been applied if market-based rates are not charged, and the percentage specified in the licence has been used.
6. An adjustment of **33% has been applied to all narrow boats** under 2.4 metres wide (as explained earlier) on the assumption that they occupy a space only capable of accommodating a narrow boat, and hence the potential value is limited. If a site inspection showed that a wider boat could be accommodated, for which there is reasonable demand, then the adjustment would be unlikely to apply.
7. An adjustment has been applied to **boats above 5 metres wide with an increment of 10% for every half metre in width**, using a sliding scale.
8. It has not been possible or appropriate to apply the proposed charging method to six of the licences because, for example, in one case the licensee's fee related to a range of uses, of which the residential element could not be isolated. In other instances the residential moorings have specific restrictions which constrain their potential value, and/or the licence stipulates the basis of the assessment and therefore it is not correct to apply the proposed formula. The large, multi-tenanted houseboats will require individual assessments. Another licence is on the verge of completion, but has not been assessed using this method. The analysis in the graphs is therefore shown for 30 licensees.

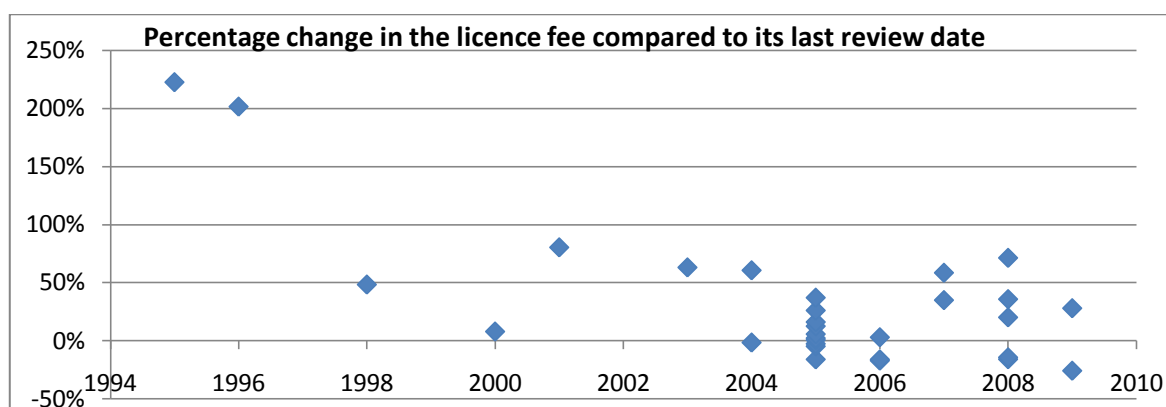
¹⁰ Source: Office of National Statistics, which is used each year by the PLA

The results of applying the proposed formula

Of the 30 licences to which the formula would apply, there would be:

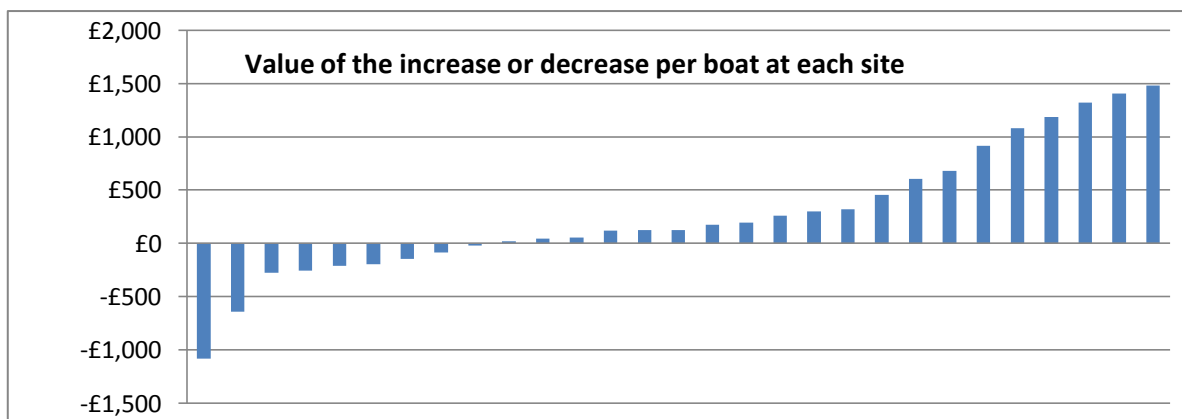
- 9 licences with a decrease of between 2% and 26%
- 19 licences with an increase of between 1% and 80%
- 1 licence with an increase of 202% (last reviewed in 1996)
- 1 licence with an increase of 223% (last reviewed in 1995 and **not** subject to RPI since.)

It is important to consider the level of potential increase in relation to the date the licence was last reviewed – the licences with last assessments that date back many years would be likely to have higher increases, compared to those that have been reviewed more recently. Therefore to put the percentage changes into context, they are shown against the last review date of each licence in the graph below. The full list is provided in Appendix II.



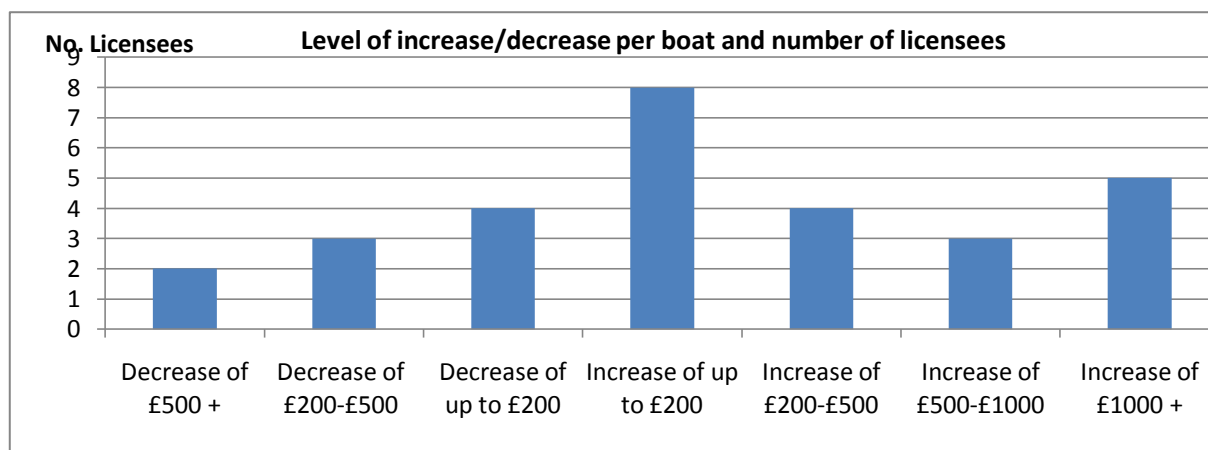
Example - the increase in the consideration at a site that was last reviewed in 1998 would be 48%

It is also important to consider the **actual** amount of potential change to each licensee's fee, rather than simply the percentage; for example one site would have a 20% increase but this represents £124. Presentation of the amount of increase alone is not meaningful without knowing the number of boats at each site. However to do this would enable the site and licensee to be identified in this report, which is inappropriate. Therefore to provide an understanding of what the proposed charging method would mean to house-boaters, the amount of increase or decrease has been divided by the number of boats at each site (in 20 cases there are only one or two boats). The following analysis therefore shows the effect 'per boat at the site'. It excludes one site, out of necessity, because the basis of their last assessment was the total metre length of mooring/pontoons which differs to the total boat lengths on site.



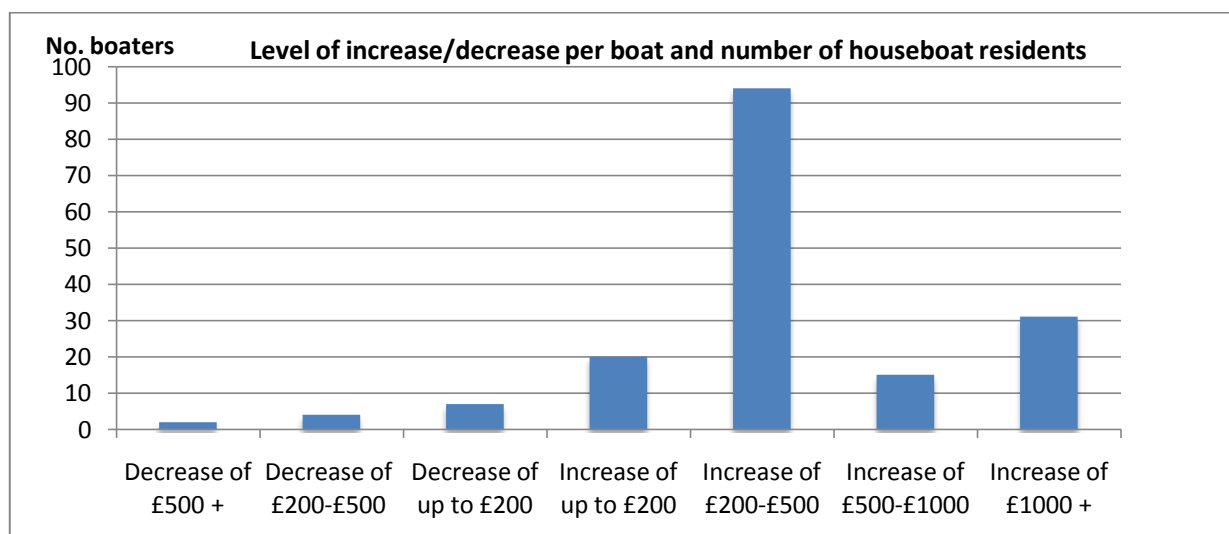
Example – at the second site (second blue bar) the decrease would be £643 per boat at that site

The magnitude of change in the River Works Licence charge varies among licensees. The graph below shows the levels of potential decreases and increases per boat at each site divided into bands, and the number of licensees within each band.



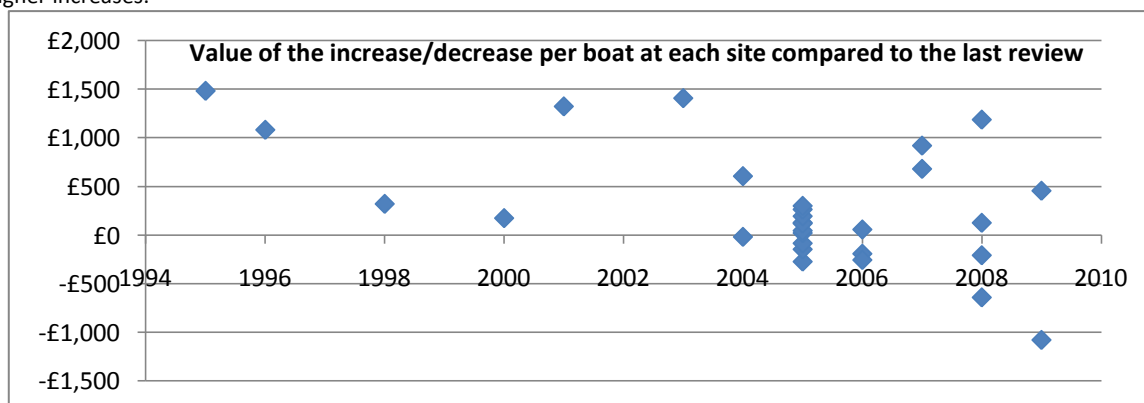
Example: Eight licensees would have an increase of between £1 and £200 per boat at their sites

It is also helpful to understand the number of houseboat residents within each of these bands i.e. how many people would have a decrease or increase, and how much it is. This is shown in the graph below:



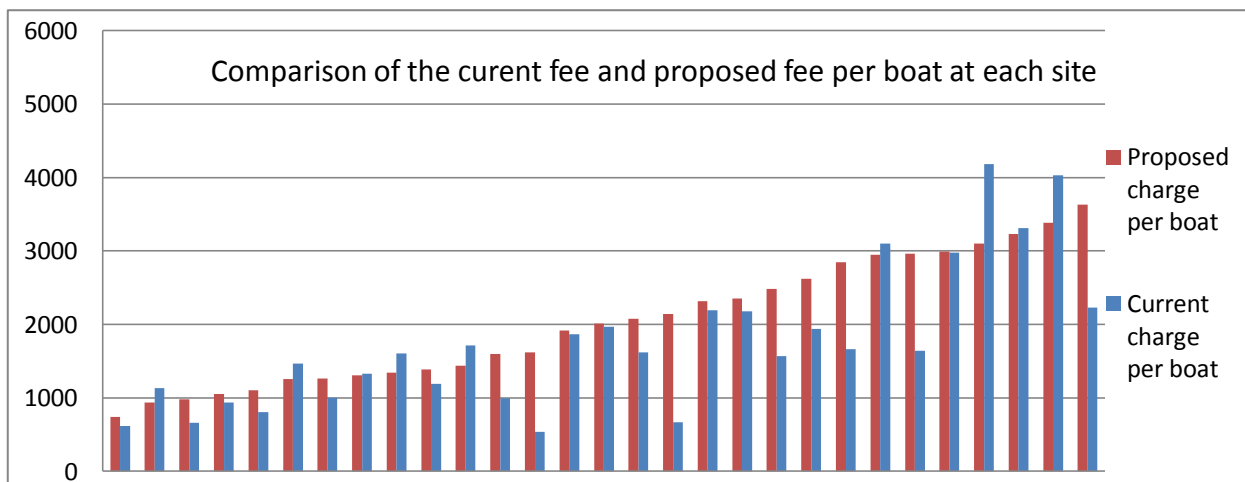
Example: 94 boaters would have an increase of between £200 and £500. Note that the remaining houseboat residents on the tidal Thames are moored on the sites of the six licences where it is not possible or appropriate to apply the formula.

As with the percentage changes in charges, it is also important to set the potential increases or decreases within the context of the last review date of each licence. As explained earlier, licences which have not been reviewed for some years would be more likely to have higher increases.



Example - the fee increase at a site which was last reviewed in 2001 would be £1321 per boat.

The final graph compares the total amount being paid currently per boat at each site to what is proposed, applying the charging formula. Note that there is a large variation between the amounts paid per boat at each site. This will be due to a combination of factors within the formula, including locational weightings and sizes of boats at the site.



Example – at the first site (first pair of red and blue bars) the proposed new fee per boat is £739 (first bar in the pair) and the current fee per boat is £615 (second bar in the pair). Where the red (first) bar in a pair is shorter than the blue (second) bar, the proposed fee is less than the current fee, as shown for example in the second pair.

Change in revenue for the Port of London Authority

If the proposed charging method were to be adopted, the resulting change in revenue for the Port of London Authority from the total of the thirty-six River Works Licences for residential use is set out below:

Total of the decreases	£3,775
Total of the increases	£93,997
Total net change	£90,222
Current total revenue	£364,905
New total revenue	£455,127
Percentage increase	24.7%

Note that the totals above:

- include the thirty licences where the proposed formula has been applied
- include the six licences where it was not possible or appropriate to apply the proposed charging formula; in these cases the current fee is used
- exclude the one licence which is nearing completion
- exclude any phasing, therefore this is the total effect of the potential changes without any phased payments

As explained earlier, it is important to understand the context for the potential increase of 24.7%, which is provided by the earlier analysis. For example, eight sites are paying River Works Licence charges which were assessed between seven and sixteen years ago, therefore a market-based assessment (using the proposed formula) after such a long period, will inevitably result in larger increases for those licensees in comparison to those who have had more recent assessments. Nearly half of the amount of total increase is attributable to four sites whose last assessments were in 1995, 1996, 1998 and 2001.

There are also both some increases and decreases for several licences which have been reviewed more recently, which possibly demonstrates some variations arising from the PLA's former valuations, although they were based on evidence available at the time of each review.

In conclusion, it is anticipated that the application of the proposed formula will bring licences up to current market value and provide a consistent, reliable approach to charging into the future.

Phasing in the changes

Application of the proposed charging method clearly affects licensees very differently. It is therefore not possible or appropriate to apply a standard phasing system for all, however some parameters are set out below.

It is anticipated that a new charging method would be implemented from 1st January 2012, following this public consultation.

However the actual date the charging method would take effect for each licensee depends on their review date. In some cases it would need to be backdated if their review date has passed and was in dispute and/or has been held in abeyance pending this review. In other cases it would take effect in the future when their next review is due. Regard must also be had to the particular licence terms because some licences stipulate review dates and cycles, along with how the consideration is to be adjusted between reviews. In these cases, the PLA and licensee are effectively 'locked in' to the terms.

In addition to the relevant date from when the proposed formula should take effect, other factors to consider include the level of increase both in percentage terms and the actual amount, plus any other relevant circumstances. The legal Opinion has confirmed that if an increase is significant then a phasing approach might be more appropriate. The PLA will therefore need to consider all aspects of each case.

When considering review dates and when and how the changes should take effect, the licensees fall into the groups detailed below:

1. A licensee with a decrease in their consideration and their review date has passed

In this case, the proposed charge would apply from when their review was due (in most cases this is between 2009 and 2010). It would therefore be backdated to the review date and the licensee would be refunded the difference between the amount they have been paying and the proposed lower amount.

2. A licensee with a decrease in their consideration but their review date is not yet due

In theory, the proposed charge would apply from when their next review is due (in most cases this is between 2013 and 2014.) However because the application of the methodology shows that their consideration would be less, it seems reasonable to allow the new amount to take effect from their next annual payment date falling after 1st January 2012.

3. A licensee with an increase in their consideration but their review date is not yet due

The considerations for many of these licensees have recently been reviewed and another review is not due until 2012 or 2013. The new amount would take effect from their next review date. It is recommended that where the resulting increases are significant, they should be phased in over a one, two or three year period.

4. A licensee with an increase in their consideration and their review date has passed

The PLA have confirmed that the earliest they will backdate overdue assessments to is 1st January 2009, which is a very reasonable concession given that some reviews were due as far back as 2006. This group of licensees fall into two groups:

a) Those whose next review date was due between November 2009 and July 2011 (the increase per boat is £43 to £453)

For some, the increase per boat is relatively small. The new amount would be backdated to the review date and the full amount would be payable immediately, (i.e. no phasing) because the increase per boat at each site is relatively small. For several others, the increase is larger and phasing may be appropriate.

b) Those whose next review date was due between 2006 and 2009 (the increase per boat is between £318 and £1,481)

Within this group, the last fee assessment was between 1995 and 2005. It is understood that the PLA served protective notices as licensees' review dates became due and in some cases stated a proposed revised fee. Therefore there should have been some expectation of a fee increase at the time.

A revised fee should be payable as from the review date, but following the PLA concession to date limit the increase to not earlier than 1st January 2009, it could be expected that the full amount would become payable as from that date.

However it is probable that if agreement had been reached at the appropriate time, and the increase had been significant, then it would have been phased in. Therefore for those sites with a significant increase per boat, the increase would be phased from 1st January 2009 for one, two or three years depending on the size of the increase.

The consultants have calculated the revised licence fee for all sites based on 2011 values. The value used for those sites with large increases, and where it is recommended the increases should be phased, is not the licence fee appropriate to 2009 but is the licence fee as at 2011. Adoption of the 2011 fee as the base for calculating the phasing from 2009 is nevertheless considered reasonable given the concession that the PLA have made in not fully backdating the increases for sites where the review date should have been before 2009. It is also a complex task to carry out a backdated fee calculation. Examples of a two year and three year phasing are as follows:

The new fee is established for 2011 using the formula.

Two years' phasing:

Jan 2009 – Dec 2009	old fee plus one third of the difference between the old and new 2011 fee
Jan 2010 – Dec 2010	old fee plus two thirds of the difference between the old and new 2011 fee

From January 2011, the formula would be applied and the new rate payable in full.

Three years' phasing:

Jan 2009 – Dec 2009	old fee plus 25% of the difference between the old and new 2011 fee
Jan 2010 – Dec 2010	old fee plus 50% of the difference between the old and new 2011 fee
Jan 2011 – Dec 2011	old fee plus 75% of the difference between the old and new 2011 fee

From January 2012, the formula would be applied and the new rate becomes payable in full.

The above process calculates the total amount due to the PLA in back-payments. It may be that the licensee would need to agree a payment plan with the PLA for the amount owing.

This may result in a larger payment for several licensees, but is to be expected because their consideration was last reviewed some years ago. They have also had the benefit of paying less than other licensees whose considerations were reviewed more recently.

In summary, the above approach is considered equitable among the different licensees and takes into account their review dates and level of increase. It is designed to bring the considerations into line with current market value, as derived from the charging methodology, in a reasonable way. Thereafter the methodology would be applied **each year** to determine the annual sum payable and therefore no future phasing would be necessary, as explained in the section 'Reviews'.

Appendix I Deriving the London-wide mooring fee from the rates of commercially operated mooring sites in London

Mooring site / marina	Published / disclosed rate per metre p.a. ex VAT	Plus boat licence per metre: EA £29 and BW £40	Comments
Tidal Thames			
Newman's / Swan Island Harbour, nr Twickenham	£329	-	Rate shown includes mooring fee £299 plus service charge £30.
Chelsea Yacht and Boat Club, Cheyne Walk	£715	-	Rate shown is calculated on the annual mooring fee of £102 plus service charge of £54 plus one year of a 5 year mooring licence of £310 per foot i.e. £62. Total annual charges are £218 per foot. Converts to £715 per metre.
Dove Pier, Chiswick	£316	-	Rate shown includes mooring fee £291 plus service charge £25.
Marinas in docks connecting to the tidal Thames			
South Dock Marina	£306	-	
Chiswick Quay Marina, Chiswick	£276	-	
BWML Limehouse Marina Grade 1 moorings	£294	-	BWML now have planning consent for residential moorings and will be re-pricing Grade 1.
BWML Poplar Dock Marina Grade 1 moorings	£302	-	BWML now have planning consent for residential moorings and will be re-pricing Grade 1.
Non-tidal Thames			
Thames Ditton Marina	£317	£346	
Harts, Surbiton	£441	£470	£7,500 p.a. Berths are 57 foot max. Equates to 17 metre length.
London Canals Many of the British Waterways rates are per berth and have been converted to per metre rates by dividing by 20 metres (typical length boat on BW residential mooring)			
Ice Wharf BW, King's Cross	£373	£413	narrowboats only
BWML Packet Boat Marina, nr Uxbridge	£289	£329	
Sturts Lock BW, Hoxton/ Hackney	£295	£335	
Holborn Studios, Hackney	£260	£300	
Fife Terrace BW, nr King's Cross	£255	£295	
Blomfield Road BW, Little Venice	£366	£406	
Kensal Green BW, Ladbroke Grove	£252	£292	
Cumberland Basin BW, Regent's Park	£287	£327	
Engineers' Wharf BW, nr Northolt	£253	£293	narrowboats only
Brentford Island BW, Brentford	£257	£297	
Benbow Waye, Uxbridge	£161	£201	
Abbot's Wharf BW, nr Limehouse	£223	£263	narrowboats only
Andersen's Wharf BW, nr Limehouse	£248	£288	
AVERAGES OF THE COMMERCIAL RATES			
	£323	Tidal Thames commercial rates	
	£294	Marinas in docks connecting to the tidal Thames (no extra boat licence)	
	£408	Non-tidal Thames includes £29 p.m. boat licence	
	£320	London Canals includes £40 p.m. boat licence	
	£336	London-wide mooring fee	
Note that Chelsea and Benbow Waye have been excluded since they lie far outside the range and would skew the result.			

Appendix II

THE LONDON PROPERTY WATCH INDEX OF AVERAGE ADVERTISED PRICES FOR PROPERTIES ON 18 JULY 2011 PER POSTCODE

IF TWICKENHAM IS SET AT 1.0 THE LOCATION WEIGHTING FACTORS FOR OTHER SITES WOULD BE AS FOLLOWS:

Postcode and mooring location		1 Bedroom			2 Bedrooms			3 Bedrooms			Bigger Properties		
		Ave. price	No. of properties	Weighting	Ave. price	No of properties	Weighting	Ave. price	No of properties	Weighting	Ave. price	No of properties	Weighting
TW1	Twickenham & Richmond	£289,000	(11)	1	£392,000	(29)	1	£570,000	(10)	1	£1,578,000	-28	1
TW7	Isleworth	£307,000	(5)	1.06	£281,000	(18)	0.72	£355,000	(20)	0.62	£723,000	(19)	0.46
TW8	Brentford and Kew	£236,000	(14)	0.82	£326,000	(39)	0.83	£413,000	(17)	0.72	£542,000	(5)	0.34
W4	Chiswick	£315,000	(27)	1.09	£415,000	(56)	1.06	£3,214,000	(20)	5.64	£1,698,000	(55)	1.08
W6	Hammersmith	£283,000	(39)	0.98	£446,000	(42)	1.14	£603,000	(23)	1.06	£1,771,000	(21)	1.12
SW18	Wandsworth	£257,000	(28)	0.89	£408,000	(53)	1.04	£783,000	(27)	1.37	£1,375,000	(45)	0.87
SW11	Battersea	£302,000	(57)	1.04	£466,000	(128)	1.19	£692,000	(56)	1.21	£1,335,000	(48)	0.85
SW10	West Brompton/Chelsea	£519,000	(35)	1.80	£727,000	(86)	1.85	£1,259,000	(24)	2.21	£3,297,000	(14)	2.09
SW8	South Lambeth	£285,000	(21)	0.99	£446,000	(57)	1.14	£484,000	(14)	0.85	£750,000	(9)	0.48
E1W	Wapping	£288,000	(64)	1.00	£375,000	(108)	0.96	£553,000	(32)	0.97	£1,368,000	(10)	0.87

The weightings highlighted in yellow have been used as the location weightings to be applied to the London-wide notional mooring fee.

Appendix III Changes in licensees' fees resulting from application of the proposed formula

Year of the licence's last review	Current charge per boat at the site	Increase/decrease per boat at the site	Percentage change	Proposed amount per boat (second column + third column)
2009	£4,180	-£1,081	-26%	£3,099
2006	£1,131	-£194	-17%	£937
2008	£4,029	-£643	-16%	£3,386
2005	£1,712	-£275	-16%	£1,437
2008	£1,463	-£210	-14%	£1,253
2006	£1,603	-£258	-16%	£1,345
2005	£3,099	-£149	-5%	£2,951
2005	£3,315	-£87	-3%	£3,228
2004	£1,327	-£21	-2%	£1,306
2005	£2,975	£19	1%	£2,994
2006	£1,864	£55	3%	£1,919
2005	£1,967	£43	2%	£2,010
2005	£2,192	£125	6%	£2,317
2000	£2,178	£172	8%	£2,350
2005	£935	£117	13%	£1,052
2005	£1,193	£192	16%	£1,385
2008	£615	£124	20%	£739
2005	£1,004	£262	26%	£1,265
2009	£1,620	£453	28%	£2,073
2007	£1,941	£678	35%	£2,620
2008	*	*	36%	*
2005	£804	£298	37%	£1,103
1998	£658	£318	48%	£977
2007	£1,568	£917	59%	£2,485
2004	£995	£603	61%	£1,599
2003	£2,226	£1,405	63%	£3,632
2008	£1,661	£1,185	71%	£2,845
2001	£1,643	£1,321	80%	£2,963
1996	£536	£1,080	202%	£1,615
1995	£665***	£1,481***	223% **	£2,146***

Notes

* The basis of this site's assessment is the total metre length of mooring, and therefore the effect of applying the formula cannot be shown per boat since the total metre length of boats on site differs to the length of mooring.

** Has not been subject to RPI since 1995.

*** The basis of this site's assessment is the total metre length of mooring, which is not too dissimilar to the total metre length of boats on site, so the effect of applying the formula has been shown per boat but is an estimate.

There is a large variation between the proposed amounts payable per boat at each site (fifth column). This will be due to locational weightings and sizes of boats at the different sites.

No site-specific adjustments have been applied.

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The many River Works Licensees, resident boaters and their representatives on the tidal Thames

British Waterways

British Waterways Marinas Ltd

Crouch Harbour Authority

The Crown Estate

Chiswick Quay Marina

Dart Harbour Authority

Environment Agency Thames and Medway Regions

Falmouth Harbour Authority

Harts Boatyard

Holborn Studios

Ian White Associates

Intermarine

Kew Marine Ltd

London Tideway Brokerage

Matthews and Sons

Medway Ports Authority

Michael Woolf & Company

Organisation of PLA Customers

Portsmouth Harbour

Residential Boat Owners' Association

Riverhomes Estate Agents

RoyScot Larch Marine Finance

South Dock Marina

Thames Ditton Marina

The Yacht Harbour Association

Walcon

About the consultants

Madge Bailey (Associates) has 18 years' experience in the inland waterways sector, particularly in the development, management and pricing of marinas and moorings. She has comprehensive knowledge of the UK and London moorings market and is a specialist in the field of residential moorings, including policy development. www.madgebailey.co.uk

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