

Study: River Works Licences for Residential Use

MINUTES of Steering Group meeting 5, 13th January 2011

PRESENT:	From Madge Bailey Associates	Madge Bailey, Independent Consultant (MB)
	From DVS	Richard Whitehill, Independent Consultant (RW)
	From PLA	Brian Chapman, Chief Financial Officer (BC)
		John Ball, Head of Property (JB)
		Doug Kempster, Corporate Communications Manager (DK)
	From OPLAC	David Beaumont, Chair of OPLAC (DB)
		Maira Allan (MA)
	From RBOA	Rex Walden, Chairman of RBOA (RexW)

Attending by invitation as legal representatives:

For PLA	Joanna Dowson, Deputy Legal Advisor (JD)
For OPLAC	Reg Morton, retired solicitor (RM)

Apologies for absence:- Peter Banks (From OPLAC)

An Agenda had previously been circulated by MB. As would be expected, Items 1 and 2 on this Agenda were Minutes of the last meeting (in this case Minutes of meeting 3 on 29/11/2010 and continuation meeting 4 on 16/12/2010) and matters arising. RW felt, however, that the circumstances of this meeting were exceptional enough to justify departing from normal practice. Meeting 5 was an extra meeting which had been scheduled in order to progress the Steering Group's brief for Counsel. It was likely that the meeting would overrun, in view of the history of Steering Group meetings; at this point, consideration of the brief had priority. He therefore felt it was right to proceed straight to Item 3 on the Agenda. Outstanding Minutes would be approved by email in the agreed way as a matter of urgency.

Agenda Item 3, Joint brief for the legal opinion

Discussion was based on the most up-to-date version of the draft brief, resulting from a meeting between JD and RM. JD had previously circulated this version to the Steering Group. It was AGREED that the most efficient way of arriving at a brief which was acceptable to all members of the Steering Group was for MB to project it on to a screen via her laptop so that everyone would be able to follow and contribute to the development of the brief as it evolved in discussion. JD undertook to email an updated version of the brief to the Steering Group after the meeting.

The following topics were discussed:

BACKGROUND

Ownership of the QC's brief

In the discussion of paragraph A, RW emphasised that this was not a joint brief: it was 'owned' by the Steering Group as a whole. RexW felt that it was important that Counsel's opinion was addressed to the Steering Group. BC stated that, while there were two sides represented on the Steering Group, which held differing opinions on many issues, what was being sought was a neutral opinion on the meaning of the 1968 Act. JB was concerned to keep the brief as neutral as possible, rather than reflecting the opposition of the two sides. DB agreed that the opinion would be neutral, but felt that it was important for the QC to understand that there were two sides. It was agreed that RW and MB would reword this part of paragraph A.

Publishing the brief before it goes to Counsel

MB proposed that the brief should be put into the public domain before being sent to the QC, so that houseboaters would have a 2-week window in which to be satisfied that their own particular concerns had been covered. RM was concerned that this would result in a large number of comments, which would delay the process. MB stated that, based on her consultations, she had endeavoured to ensure that all the points which people had raised (including through OPLAC) had been covered. She felt that this last-minute opportunity to put something forward for the brief was unlikely to result in many suggestions; nevertheless, she believed it was appropriate to give an opportunity to licensees to highlight an important issue that might have been overlooked.

Paper 4 V2 (to be included with QC's brief)

MB had circulated an updated version of her research Paper 4, which drew together the factual information which she had gathered from various sources on River Works Licences and licensees. MB proposed that it should be part of the brief, as useful background. Paper 4 had until now been confidential to the Steering Group. After consideration, BC accepted, with reluctance, that, as the brief was to be made public before being submitted to Counsel, Paper 4 would also have to be made public.

MB undertook to make certain changes to Paper 4 before publication. She would remove the 'Confidential' watermark. She would also ensure that Paper 4 refers to categories of houseboaters, so that specific sources or locations could not be identified. She had added a new section, one page covering the issue of "Value" which would be helpful to brief the barrister. She would make it clear in the beginning of this new section that it was the consultant's assessment which has yet to be discussed and agreed by the Steering Group, and is not to be taken as expressing the views of the Steering Group as a whole. MB undertook to add the qualifier 'arguably' or suitable wording as appropriate.

RexW stated that he was very concerned that the brief should not link the value of a mooring to values on land. He emphasised that the situation on the water was very different from on land. People renting a mooring or boat had no security of tenure. The monopoly value was very much greater on water because of the shortage of moorings; there were fewer places where people could choose to live. Because there are so few moorings with residential planning permission, boaters are forced to accept landlords' high charges.

Examples of RWLs to accompany brief

The question of choosing which licence or licences should accompany the brief was raised by MB. RW questioned the necessity of attaching a real licence; RM felt that it was necessary for the QC to see what was being discussed. He wondered whether there was a template as a starting point to be modified in individual cases. JD also questioned the necessity to include a licence as individual licences could not be published. DB wanted actual licences to be included but stated that he was happy for individual licences to be kept confidential. BC stated that, if Counsel was asked to examine the entire group of 41 licences, the PLA would have to obtain permission from all 41 licenceholders.

JD suggested a representative sample; it should be possible to blank out details which could identify individuals. BC suggested submitting five licences as a representative sample. JB suggested that choosing the sample of five could be done by JD and RM, together with MB, who is familiar with the licences from her research. RW stated that

the licences would remain confidential to the barrister and would not be published, either in the initial publication, or with the Report. RM stated that, when the brief is published, there should be a footnote to indicate that a representative sample of five anonymised licences would be given to Counsel, but that details could not be made public for Data Protection reasons. DB stated, as a point of principle, that the Steering Group must know what information was being given to the barrister. If the barrister was to see real licences, the Steering Group should see those licences. It was AGREED that the sample of five licences would be anonymised, which meant that all members of the Steering Group could see them.

Conference with QC

RW stated that he would assume that Counsel would ask for a conference in any case. RexW felt strongly that he wanted to convey to Counsel the amount of opprobrium widely felt towards people who lived on boats. In his capacity as Chair of RBOA, he received telephone calls requesting information from organisations such as Citizens' Advice Bureau and from Planning officials. They were shocked to find out from him that boat owners had no security of tenure. He wanted to have the opportunity to say this to Counsel. It was AGREED that a request for a conference would be included in the brief.

Inclusion of previous legal opinions

DB favoured the inclusion of previous legal opinions with the brief for Counsel. JB emphasised that the Steering Group was seeking a neutral opinion; if previous opinions were included many opinions could be submitted by both sides, and it would be difficult to obtain agreement on which should be submitted. RM pointed out that the QC would do his own research in any case. RexW felt that, as we would be requesting a conference, opinions were not necessary. RW put the matter to a vote of members of the steering group, which was against including opinions, DB being the only member in favour.

SPECIFIC QUESTIONS FOR COUNSEL

Valuation at review

In the discussion of Question 2, under subheading 'Reasonable', RexW objected to 'a boom in local property prices' being included as an example of factors which might be relevant in periodic licence fee reviews. He felt strongly that what is happening to property values on land is not relevant to values on the water. DB believed that the relevant question was whether property prices SHOULD influence the value of a mooring when it is reviewed. He stated that this question was not covered by Question 24, but related to reviews of licence fees.

RW questioned whether the same definition of 'best consideration' should apply at review as at issue, and also whether the PLA was required to review to best consideration. RM queried whether the PLA was required to start afresh at every review and go for best consideration. JB stated that the PLA can only deny a licence on navigational grounds, and therefore do not have the opportunity to test the market. He confirmed in passing that the PLA had the power to issue a licence, and thus allow works to be placed, before the consideration had been agreed but for expediency sake it was preferable to agree all aspects including consideration .(PLA Act 1968 section 67 (3))

In the discussion of Question 11, under subheading 'Value', it was AGREED that reference would be made to page 6 of Paper 4.

Charging of navigation fee

In the discussion of Question 12, under subheading 'Value', JB explained that the PLA currently charges a nominal annual navigation fee of £200 for River works where Crown Estate owns the riverbed. These 'Licensees' will also pay a RWL fee to the Crown; this has nothing to do with the PLA. BC stated that RWL fees paid to the Crown are nothing to do with the present Study. MB stated that the Study relates to RWLs for residential use based on the assumption that the PLA owns the land. The first half of Question 12 was retained and moved to become part of *Background*; the second half was deleted.

Impact of costs

In the discussion of the second part of Question 14, under subheading 'All the circumstances of the case', RM felt that it was obvious that the impact of ongoing maintenance costs should be included, as they were undoubtedly 'circumstances'. RW felt that 'costs' imply a valuation element, and questioned whether it was appropriate to ask for Counsel's opinion. MB had included this as a question raised in her consultations. She felt it was worth including as reassurance to licensees who have raised the issue. This question will become a separate subheading, 'Impact of costs' between 'Value' and 'All the circumstances of the case'.

Site-specific factors

In the discussion of the first part of Question 14, under subheading 'All the circumstances of the case', DB requested that grounding should be inserted. MB felt that there was no need to give an exhaustive list of river factors, and favoured generalised headings such as 'Locational, site specific factors'. She thought that grounding would be covered under 'river conditions'. RW felt the Steering Group should be pointing the barrister towards factors specific to river living. JB agreed to the inclusion of grounding.

RexW and MB had to leave the meeting at this point, before discussion of the following topics.

FIVE ADDITIONAL QUESTIONS SUBMITTED BY RM

Can the PLA charge less than 'best consideration'?

Question 2 addresses the question of whether it would be a derogation of the PLA's statutory responsibility if they did not charge best consideration. DB quoted Section 67 of the Act: paragraph (1) refers to reaching an agreement as to the consideration, with arbitration as an option if agreement cannot be reached, while paragraph (2) goes on to mention 'best consideration'. DB interpreted this as meaning that the PLA were first permitted by the Act to attempt to reach agreement without the constraint of best consideration. RW advised that this question should not be put into the brief as, if the barrister came back with an unfavourable answer, the PLA would have no room for manoeuvre in negotiating licence fees. BC and JB could not accept the inclusion of this question. BC stated that, at the moment, the PLA has an element of flexibility. RM advised caution; he believed that Counsel's opinion was likely to be that the PLA did have to go for best consideration. With reluctance, DB withdrew this question.

PLA jurisdiction over navigable area of river/compensation case law

RM explained that Questions 4 and 5 were prompted by a Land Tribunal case. RW stated that the work of the Steering Group related to the 1968 Act and that compensation case law was not relevant to the Study.

Choice of barrister

DB wished to change the choice of barrister from Michael Humphries to Robin Purchas, also of Francis Taylor Chambers, as at the last meeting he had not been aware that Michael Humphries had acted for the PLA three times in the past. He believed that houseboaters would be more inclined to accept Counsel's opinion if it came

from a barrister who had not previously been employed by the PLA. MA did not agree, and stated that Michael Humphries had been commended by RexW and MB following his success in acting for BW and canal boaters in a celebrated case and was also one of those on the OPLAC list (before OPLAC had been made aware of the 3 times he had acted for the PLA). BC stated that he did not want this issue to have an adverse affect on the success of the Study. Apart from the issue of having worked for the PLA in the past, both barristers were acceptable to all members of the Steering Group, which was divided on the issue of whether to change or not. RW stated that, as opinions seemed to be evenly divided, he would use his casting vote for Robin Purchas. He undertook to make the call to the Clerk of Chambers and hoped that protocol would not make it difficult to make the change.

Note of future Steering Group meeting dates:

Thursday, 17th February 2011, - post meeting note – this has since been cancelled and changed to 21st February, following the conference with Counsel.

Friday, 1st April 2011.



Chair PLA Licence Steering Group

5th May 2011