

**Port of London Authority**

**River Works Licences for Residential Use**

**Review of the Charging Method**

**Final Recommendations Report**



**Version II    23rd December 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.

This report is the culmination of an 18-month review. A Steering Group was established to advise on the direction of the review, identify issues and provide a forum for debate. The Steering Group agreed the terms of reference and also jointly sought an independent legal opinion. It comprised three representatives from the Port of London Authority and four representatives of residential river works licensees and residential boaters (two of whom withdrew before the last Steering Group meeting where the recommendations were discussed).

Informal consultation was conducted at the outset of the review among licensees, resident house-boaters and other interested parties. At the end of the review, the consultants' Proposals Report was the subject of a formal public consultation, the results of which helped to inform this Recommendations Report.

We are very grateful to the Steering Group members and broad range of licensees and house-boaters for their input throughout the course of this review. All of the issues have been thoroughly debated, although some were understandably contentious.

This Report contains the consultants' recommendations for the method of charging for River Works Licences for residential use, phasing of payments (where increases are significant) and a process for dispute resolution. It received unanimous endorsement from the Steering Group at their last meeting.

We now advise the PLA to consider this Report and make a policy statement about charging, phasing and dispute resolution.

Further copies of this Report and related documents can be downloaded from [www.pla.co.uk/houseboats](http://www.pla.co.uk/houseboats).

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

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 18 month 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 interested parties such as navigation and port authorities, mooring operators, estate agents and surveyors. Informal consultation was conducted at the outset of the review. The consultants' Proposals Report was the subject of a formal public consultation at the end of the review.

To be able to moor a houseboat on the tidal Thames where the PLA owns the riverbed<sup>1</sup>, 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 41 River Works Licences for residential use, accommodating c. 280 houseboats, clustered in 11 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 1990s 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 during this period led to the charges slipping behind what it believed to be potential 'best consideration'. The PLA also began to observe significant sales and rental values of houseboats on moorings with River Works Licences. The PLA moved away from RPI adopting a more commercial approach from 1995 using chartered surveyors and market-based valuations.

Understandably, market-based reviews met with resistance from some licensees, although over half of the current licences were granted after 1995 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, the use of rates settled at existing or new sites as comparables (which are known by the PLA but not the licensee) for other reviews and insufficient rationale. 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.

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<sup>1</sup> Where the PLA does not own the riverbed, it charges a Navigation Licence Fee in respect of river works.

## Indicators of value

The indicators of value across just 41 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.

## 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, DfT 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 and a broad range of reference points from 9% to 50% of gross mooring value, although it is important to understand what exactly these rates take into account when considering their relevance to the PLA's situation.

## 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, Robin Purchas QC. His opinion was that '*... the underlying objective of the provisions in section 67 is to ensure that the PLA is required to charge what is the best consideration on the defined basis...*' meaning '*... best in monetary or commercial value...*' that can '*... reasonably be obtained...*'

The PLA can take account of the value derived from the licence and must consider all relevant circumstances of each case, but cannot exploit its 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.

## Public consultation

Proposals were developed which broadly addressed the main points raised by all parties at the outset of the review. Of the 30 licences to which the formula would have applied<sup>2</sup>, the proposals resulted in a decrease for 9 and an increase for 21.

The public consultation resulted in responses relating to 19 licences (also representing 16 houseboats), 57 houseboats (who were not licensees or co-licensees) and 17 others. The consultants also arranged 16 meetings with a total of 49 people (and phone calls with 2 others). This was a good level of response and there were a range of views:

- a minority supported the approach;
- some people agreed with some of the principles, but not necessarily the amounts proposed;
- many disagreed with some of the basic principles adopted and also the amounts proposed.

The points of disagreement centred particularly on the valuation approach, proposed share of net value for the PLA, its monopoly position, comparison with other navigation authorities' rates, site-specific factors, affordability, which costs were allowable (with preference for actual costs rather than a proxy rate), and the view that the PLA is only required to charge best consideration that can reasonably be obtained at arbitration, allowing it to agree a lesser charge before arbitration.

Of the 19 licences represented by the responses, 15 were estimated to have an increase.

Many other points made during the consultation led to modifications of the proposals and greater clarity of the rationale.

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<sup>2</sup> Five licences were excluded from the analysis in the Proposals Report because it was understood they were in the process of transition to a new head licence. However this has not taken effect and the licences have now been included.

## Principles for the recommendations

It has always been clear that there are strong-held beliefs about what should be the correct principles for charging for River Works Licences. It is impossible to recommend an approach that everyone will support because not everybody likes or accepts the principles. However, the consultants have considered at length all the arguments put to them and in their independent, professional view, the principles below set the parameters for the charge:

- The provisions of the Port of London Act 1968
- The independent legal opinion which stated that *‘the underlying objective of the provisions in section 67 is to ensure that the PLA is required to charge what is the best consideration on the defined basis...’* meaning *‘best in monetary or commercial value’* that can *‘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...’*
- Government guidance on how Trust Ports should set their charges (*Modernising Trust Ports, 2009*)
- By granting a RWL, the PLA enables a mooring to be created, and that mooring has a value (actual or potential). The licensee benefits from the value created.
- Since it owns the river bed, the PLA is entitled to a share of the current market value as set out in the licence agreement.
- The PLA is not able to set reduced or ‘affordable’ charges.

The aim is, and has been, to develop a clear, consistent, reasonable approach to charging, given the parameters to work within.

## Recommendations

A total of 13 options were considered for the charging method, some of which had more merit than others. The recommended approach is a formula as follows:

**30% of actual net or notional net annual mooring revenue**  
**This formula equates to 25.5% of gross actual or notional mooring revenue**

Whilst this is a simple formula, it is based on several key factors:

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

1. Where competitively priced mooring fees are charged by a licensee, the **actual** mooring revenue is used
2. Where mooring fees are not charged, or charged but not competitively priced, the **notional** mooring revenue is used
3. Large multi-tenanted houseboats derive value from **letting/room rental** which is considered as the revenue

The deduction for costs is 15% in 1 and 2 above, and subject to individual assessment for 3. A notional London-wide gross mooring fee is derived from a range of competitively priced residential mooring sites across London. This is adjusted using location and site-specific factors for each site, plus boat widths.

The main elements of this formula are as follows:

### Actual mooring revenue

Based on the legal opinion, if the actual mooring fees are at their potential market value, they would be used as the basis. If they are below reasonable potential value, the notional mooring fee would be applied. Although this is a potentially subjective judgement, the consultants found it relatively straightforward to establish with the mooring providers. Where service charges were made, the elements within the charge varied between licensees so the total combined fees and charges are to be considered as the total revenue, from which 15% would be deducted for costs. 30% of this net revenue is the River Works Licence charge.

### The notional annual gross mooring fee

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 £326 ex VAT per metre per year. An annual timetable has been recommended for the process.

### **Each site's notional gross mooring fee**

The London-wide notional gross fee would be adjusted for each of the 11 areas on the Thames. A postcode property index provides differentials between these 11 areas<sup>3</sup> (note that it does not apply property values to the moorings). The weightings derived range from 0.72 in Isleworth to 1.85 in Chelsea. A further adjustment would be made for any site-specific factors agreed between the licensee and the PLA. Some parameters have been set out in this report to provide a degree of clarity, but it is beyond the remit of the review to devise a specific 'menu'. However the licensees were concerned about the need to negotiate these and therefore the PLA is considering this issue further.

### **Applying the site's notional gross mooring fee to the boats on site**

The notional gross 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. Some parameters have been set out to provide clarity on the issue of 'potentiality'.

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 would be 15% (of actual or notional gross mooring revenue). This rate is derived from 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 30% share of the net value (actual or notional) as the charge for the River Works Licence**

There are three parties involved in the establishment of a residential mooring: the licensee who contributes their capital and expertise; the PLA who grants the use of its 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 approach of equal shares is based on case law (the 1961 Lands Tribunal case *Stokes v Cambridge*) and existing agreements for new moorings which specify a percentage share of the value. The agreements show that the percentage agreed has increased from 20% of gross mooring fees in the 1980s, to 25% in the 1990s and 33% of value post 2000.

However, in considering the post-2000 licences, the developer's receipt of upfront capital premiums for the moorings is likely to form an element in their considerations when agreeing terms with the PLA. Such facility may not always have been open to pre-existing licences. In recognition of this issue the recommended percentage appropriate to the PLA is 30% of the net mooring revenue. This equates to 25.5% of gross mooring revenue; there are reference points from earlier agreements which support this approach.

### **Large multi-tenanted houseboats**

These vessels derive value from letting/room rental which would 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 30% of the net rental.

### **Individual licence reviews**

Periodic reviews of individual licence charges would no longer be necessary<sup>4</sup> because, instead, the formula would be applied each year to determine the annual sum payable. Only occasional checks are advisable to review any site-specific allowances. The formula is the only calculation each year; RPI or other adjustments are not relevant because the charge will track market values of residential mooring fees in London (which could go up or down) and it will be up-to-date each year.

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<sup>3</sup> When these location weightings were applied to the London-wide notional fee, the results were within 4% and 18% of the actual fees charged by the three main commercially operated sites on the tidal Thames.

<sup>4</sup> Unless stipulated in the licence, in which case the formula could only be applied on the review date.

## New licence agreements

For new agreements, the recommended formula would apply to the annual charge but additional terms would be freely negotiated. This ensures that terms for new developments are open enough to enable *both* the developer (prospective licensee) and the PLA sufficient flexibility to agree terms as appropriate at the time to ensure that the mooring scheme can take place.

## Dispute Resolution

A three-stage dispute resolution process is proposed with (1) the licensee stating their case to the PLA licensing department and, if unresolved, referring the matter to (2) a Dispute Resolution Panel. The PLA could also refer cases to the Panel. The Panel would comprise the District Valuer (who would chair the Panel) and two other voluntary members who possess the necessary skills and are fully independent of the parties and outcome of the case. The Panel's remit is to consider disputes relating to the elements within the formula or its application. 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 (stage 3), it is hoped that arbitration would be less likely once the matter had been heard by the Panel.

## Results of applying the proposed formula

Of the 35 licences to which the formula could be applied, there would be 13 decreases and 22 increases shown below:

No. of licences	% increase/decrease		Date of last review	Amount of increase/ decrease <u>per boat</u> at the sites	No. of houseboats
13	0% – 37%	decrease	Between 2005 and 2009	–£4 to –£1,562	23
9	2% - 27%	increase	Between 2004 and 2009 (and one in 1998)	£18 to £360 *	106 *
6	39% - 63%	increase	Between 2000 and 2008	£392 to £1,098	30
3	134% - 184%	increase	1995, 1996 or 1997 and one not subject to RPI since	£843 to £2,139	15
4	245% - 378%	increase	between 1994 and 2000	£1,475 to £2,444	4

\* One licence cannot be analysed 'per boat' because the basis for the assessment is metre length of pontoon.

There are six licences where it was not possible or appropriate to apply the proposed charging formula. Site-specific factors have not been applied; where applicable this may reduce the effect for some sites. Such could be up to 10%. Neither has phasing been applied, therefore this is the total effect of the potential changes without any phased payments.

The resulting change in revenue for the Port of London Authority, once the full changes had taken effect, would be an increase of 18.6% or £68,374, from £367,828 to £436,202 across the 41 licences. To put this increase into context, the charges for ten licences were last assessed between ten and seventeen years ago; over half of the total increase is attributable to these ten licences.

There are also both some increases and decreases for several licences which have been reviewed more recently, which possibly demonstrates some variations arising from previous valuations. Above all, the formula will bring a more equitable approach to all licences where it can be applied.

## Implementation and phasing

If adopted, it is recommended that the charging method should take effect from 1<sup>st</sup> January 2012 (even if the PLA makes a decision and policy statement shortly after that date). However the date the charges would take effect for each licence would depend on its review date and the level of increase or decrease. The PLA would therefore need to consider all aspects of each case. The PLA has confirmed that the earliest it will backdate overdue assessments to is 1<sup>st</sup> January 2009, which is a reasonable concession given that some reviews were due earlier than that. Some parameters have been recommended which are considered equitable among the different licences. They are designed to bring the considerations into line with estimated current market value, as derived from the charging methodology, and in a reasonable way.

## Review of the charging methodology

If the recommendations were to be adopted, a basic review of their effectiveness is recommended two or three years after implementation to ensure that the methodology and each element of the formula remain appropriate. A suitable time for a subsequent review should then be agreed, for example between five and ten years later.



## Merits

- It is a clear, simple formula, with simple adjustments to take account of local circumstances. It is an equitable approach to all 35 licences (out of the 41 where it can be applied). It also provides a method for 3 of the remaining 6 licences which are large multi-tenanted houseboats; the other 3 licences either have specific terms relating to the charge, or the current assessment does not isolate the residential element from the mixed use.
- Actual mooring revenue is clear, unequivocal and easily validated. Notional mooring revenue is estimated reasonably by using a large basket of market-based mooring fees, is easy to monitor, tracks market movements (down or up) and is likely to be a stable method that the PLA does not influence. It requires a simple annual review of published residential mooring fees across London, and the London Property Watch values, which is also more cost-effective for the PLA to administer.
- The annual sum payable is always current. Periodic individual reviews are no longer necessary (for most).
- It provides certainty and prevents any party taking an unreasonably higher share of value than the others. The River Works Licence fees to remain the same proportion of the mooring value into the future.
- It is comparable with established industry practice among other navigation and port authorities.
- It reduces 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.

## Demerits

- A notional mooring fee with location adjustments is not a perfect model for estimating reasonable market value but there are too few comparables on the tidal Thames. The location adjustments rely on London Property Watch, which offered good sized samples. Potentially it may cease to operate but alternative sites could probably take its place.
- It is a subjective approach to decide which sites are competitively priced and included in the basket for the notional mooring fee each year. However reasonable justification needs to be provided for excluding sites, if challenged.
- It is also subjective to decide whether an operator's rates are market-priced or to apply the notional fee. However the consultants found it relatively straightforward to establish with the mooring providers and the licensee could challenge the decision at the Dispute Resolution Panel.
- One cost deduction rate for all is a very general approach but the alternative of using actual costs would require scrutiny of accounts each year and could well result in dispute over which items are admissible and the reasonableness of the costs.
- The approach could not include a 'menu' of site-specific factors and allowances to ensure an open and consistent application. The PLA is considering this issue further.
- The approach for large multi-tenanted boats relies on the licensee providing the necessary information, but alternatively the PLA could use reasonable estimates and market evidence. It is potentially a subjective judgement on what constitutes a large multi-tenanted houseboat, but the recommended definition is based on current information.

## Conclusion

This has been a long and comprehensive review where all parties have provided their views and debated some complex issues. Through this process, the key principles have been established which provide the parameters for the recommended charging method in what is a relatively small but diverse market. Given these circumstances, the recommendations are considered to be the most suitable and reasonable approach. The scope for subjectivity and dispute is much reduced and the formula should bring a more predictable, consistent, equitable, transparent and stable approach to charging into the future.

If applied, the approach would result in an estimated decrease or small increase in charge for half of the 35 licences, most of which have been reviewed more recently. Of the remaining licences, the larger increases tend to be for licences which have not been reviewed for over 10 years.

We now advise the PLA to consider this Report and make a policy statement about charging, phasing and dispute resolution.

## 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 41 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 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 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

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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 terms of reference stated that the main outputs of this review should be:

- 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 method for resolving disputes that enables issues to be addressed within a reasonable time frame at the behest of either party and less formally, and therefore as inexpensively as possible, than resort to arbitration (arbitration being the final resort available to either party as provided by the PLA Act).

## How the review was conducted

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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 Licences (Organisation of PLA Customers)<sup>5</sup>, 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 the members, minutes of meetings, report of the public consultation and other relevant documents refer to [www.pla.co.uk/houseboats](http://www.pla.co.uk/houseboats).

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.

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 with 63 people to establish the perspectives of the licensees, resident boaters and PLA;
- a formal legal opinion, jointly sought and 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 proposals which were discussed and assessed by the Steering Group;
- a formal public consultation for 10 weeks which resulted in 93 responses and included small focus meetings with a total of 51 people;
- the Steering Group's review of the consultants' findings and recommendations;
- the final conclusions and recommendations of the consultants, contained in this Report.

**The PLA should now consider this Report and make a statement about charging, phasing and dispute resolution.**

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<sup>5</sup> Two of the OPLAC members withdrew before the last Steering Group meeting where the recommendations were discussed.

## Why was a review needed?

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

### 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.

Most licences provided for a reassessment of the charge, but 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. Some came many years ago when it was considered very affordable and made decisions based on the charges at the time. Demand for some sites is still because it remains a relatively affordable way to live in the area compared to buying land-based property. Other people have more recently sought a lifestyle afloat, sometimes paying a significant sum for a mooring, or a houseboat with mooring.

The PLA's convention of applying RPI increases over a considerable period of time led to the charges slipping behind what it believed to be potential 'best consideration'. In 1995 the PLA engaged chartered surveyors to conduct residential (and other) River Works Licence reviews. It moved away from RPI and applied valuation principles using what it considered to be market comparables for reassessment. It sometimes used slightly different approaches for different sites, the principle being to take account of the site's specific circumstances (as required in the Act), any specific terms of the licence, and differences between sites. It applied what it believed were the most suitable methods such as footprint, linear metre of boats, mooring frontage etc.

### Two views of the problem

From the PLA's perspective, it has a duty to charge 'best consideration' as set out in the Act. It observes mooring fees and values when moorings/houseboats on moorings were advertised for sale, an element of which was the River Works Licence. It has adopted a more commercial approach in recent years, using chartered surveyors and market-based valuations, using what it believes to be suitable comparables.

From the licensees' perspective, understandably, market-based reviews met with resistance, particularly from those who had relied upon the PLA's former practice for some 20 years. However it should be noted that just over half of the current licences have been granted since 1995, 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.

Some licensees question the PLA's interpretation of the Act. Some believe the different valuation approaches and comparables appeared inconsistent and insufficiently explained. They also resent the use of rates settled for existing and new licences as comparables for others within what is a relatively small market (37 licences, 12 locations and 280 houseboats). They are also 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. This issue is acknowledged by the PLA, and although arbitration is a provision of the Act, the PLA would also welcome an interim stage for dispute resolution.

### **The current situation**

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

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.

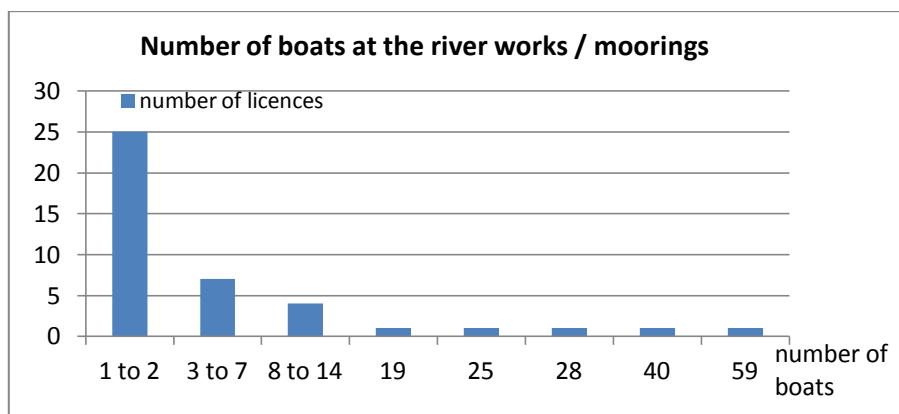
All parties want a charging method which is more predictable and transparent – hence this review.



*Chelsea Yacht and Boat Company*

### Number of licences, houseboats and locations

There are 41 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 houseboats<sup>6</sup>.



The river works/mooring sites are at 11 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 and Eel Pie Island	2	43
Richmond	8	18
Isleworth	2	32
Brentford to Kew Bridge	6	16
Chiswick	1	8
Chiswick Mall to Hammersmith	8	36
Wandsworth	2	23
Battersea	8	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 a third of licences was between 7 and 17 years ago, which have since been subject to RPI increases (apart from one).

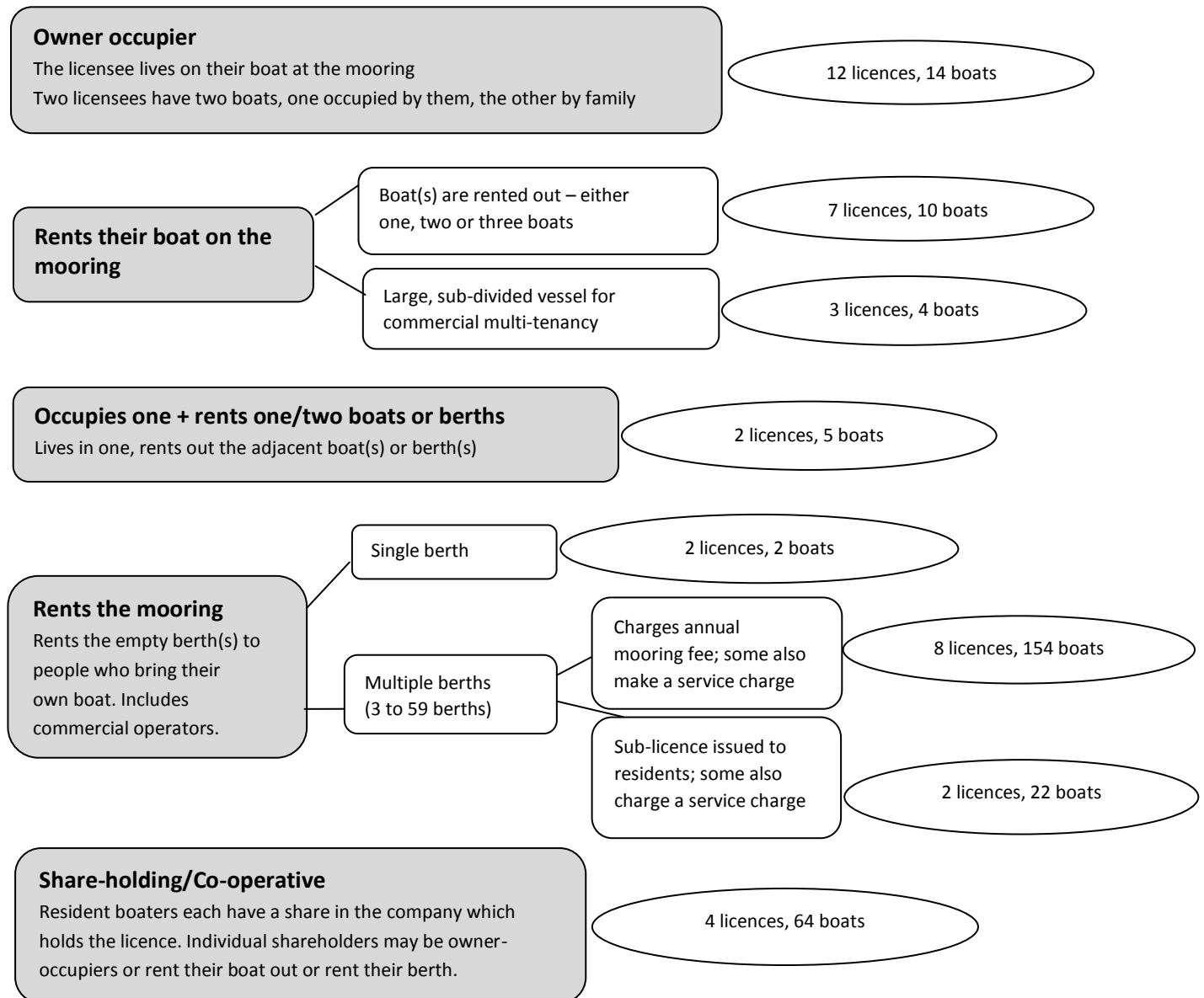
In summary, there is a relatively small number of licences to consider, and many of the sites are small. Some of the current charges are likely to be outdated, whatever the method for charging, since they have not been reviewed for some time, other than by RPI.

<sup>6</sup> 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 41 licences, 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, the use of one licence was unknown.*

## Land access

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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. Typically land access is either:

- **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 per annum 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

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The 41 licences span some 39 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.

<b>Consideration</b>	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.
<b>Reviews</b>	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.
<b>Term</b>	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.
<b>Use</b>	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.
<b>Alienation</b>	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.
<b>Revocation</b>	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

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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. In some cases the mooring and River Works Licence are just one element which need to be isolated from the 'package' in order to identify their value.

- 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;
- the sale price of a vacant mooring;
- the sale price of a houseboat on its mooring;
- 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.

### Some examples of moorings and houseboats advertised in the last year (actual sale/rental prices may differ)<sup>7</sup>

- £329 per metre p.a. mooring fee (includes service charge) 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
- £800 advertised monthly rent for a vacant serviced mooring near Teddington
- £275,000 advertised sale price for an 80 foot vacant mooring in Battersea
- £450,000 advertised sale price for a 110 foot barge in Brentford on its mooring
- £1,250 advertised 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. In other cases, the advertised sale or rental price may be known, but the agreed price is not, nor any subsequent rent reviews. 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 41 licences 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, but it needs to be isolated from the 'package'.

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<sup>7</sup> 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 works

The Government expects Port Trusts, of which the PLA is one, to operate commercially. Its guidance document *Modernising Trust Ports*<sup>8</sup> 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 required to adopt a commercial approach<sup>9</sup> and they use market valuation principles.

### British Waterways

British Waterways charges 9% of gross maximum potential mooring income to **marinas which connect to their waterways**. This rate was set after dialogue with the British Marine Federation and takes into account, among other things:

- It is based on the marina’s *capacity*, not occupancy, and therefore the operator is charged for vacant berths.
- The boats do not occupy BW’s canal-bed, they occupy the riparian land-owner’s bed of the marina.

BW charges 50% of the gross 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. In these instances:

- Usually the mooring works, associated costs and risks are negligible.
- There are only two parties involved. The 50% charge represents an equal split of value between the land-owner and BW; it has been tested in a County Court.

BW’s current approach to **multiple boat sites** on their canals (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.

### 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.

<sup>8</sup> *Modernising Trust Ports (MTP)* 2nd edition, DfT 2009 1.2.1

<sup>9</sup> *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.’

## 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.

## Environment Agency

The Environment Agency's statute<sup>10</sup> 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 therefore could not be considered as a model for the PLA (refer to the legal opinion further on in Part 3, page20). 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.

## 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.

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.

### Conclusions from the practice of other authorities

There is established industry practice of:

- recognising the value as being the mooring fee and charging for works as a percentage of mooring rates (or area on the Medway) which is clearly identifiable;
- recognising that the authority owning the port/canal/estuary bed can charge for its occupation;
- recognising a split of value between the authority and adjacent land-owner/mooring operator;
- taking the land-owner/mooring operator's costs into account;
- the need to take account of any monopoly issues and dominant position.

### Conclusions on the rates charged

There is a broad range of reference points from 9% to 50% of gross mooring value.

It is important to understand what exactly these rates take into account when considering their relevance.

The marina rates are for commercially operated marinas. Such sites require considerable investment e.g. excavation, road access, parking and buildings to make a marina viable; they are mostly for leisure use. Therefore they have a different profile of use, cost and risk.

### In summary

This provides some key principles and reference points from established industry practice for consideration for the PLA charges. However there is a broad range of charges and it is important to consider their relevance to the PLA's situation.

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<sup>10</sup> **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.*'

## Dispute resolution for other UK port and navigation authorities

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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 BW's internal Fair Trading Committee (comprising managers, executive and non-executive directors).

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.'*<sup>11</sup>

The appropriate method for resolving disputes depends on the particular organisation. No standardised approach was found for any of the waterways authorities reviewed. For the PLA, the method is as set out in the Port of London Act 1968, s67, and is by way of arbitration. Arbitration is accepted by all parties as expensive. It is common ground that a more cost effective and cheaper approach to settling River Works Licence fee disagreement needs to be found although it is also acknowledged that any such approach cannot override the right to submit a dispute to arbitration.

Further discussion on dispute resolution for the PLA's River Works Licences is in Part 4 of this report.



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

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<sup>11</sup> **Modernising Trust Ports (MTP)** 2nd edition, DfT 2009

## Independent legal opinion from Robin Purchas QC

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During discussions with the licensees at the outset of this review, concerns were raised about the PLA's interpretation of the Port of London Act 1968 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's 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 OPLAC representatives 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/houseboats](http://www.pla.co.uk/houseboats). 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 **'the underlying objective of the provisions in section 67 is to ensure that the PLA is required to charge what is the best consideration on the defined basis...'** 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)*

## Consultation with licensees and houseboat residents

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Throughout the review, licensees and houseboat residents have been able to provide their views by:

- Representation on the Steering Group by three members who were licensees and one member who represented residential boaters.
- A 10-week public consultation on the consultants' proposals to which there were 93 responses; in addition the consultants had 16 meetings with a total of 49 people (and phone calls with 2 others).
- Extensive consultation undertaken at the outset of the review with 65 licensees and houseboat residents in late 2010.
- The consultants also reviewed the responses to the PLA's consultation on charging for River Works Licences in 2006.

The full reports of consultees' views can be found at [www.pla.co.uk/houseboats](http://www.pla.co.uk/houseboats).

### Licensees' and houseboat residents' views on the current situation

- Some believed the different valuation approaches and comparables previously used by the PLA appeared inconsistent and insufficiently explained. They also resented the use of rates settled for existing and new licences as comparables for others within what is a relatively small market (41 licences, 11 locations and 280 houseboats).
- There was also concern at the apparent unfairness that some licences had been reviewed relatively recently and were paying much more than others which had not been reviewed for many years.
- Many are unfamiliar with commercial negotiations and resent the route of arbitration, which can be costly and is perceived as unfair in terms of their lack of power and ability to represent themselves versus the PLA.
- They were also concerned about the PLA's monopoly position as sole supplier of River Works Licences. Some resident boaters and businesses said that licence charges and other costs were pushing them to the limits of affordability.

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

There was likely to be some support for:

1. charging operators a percentage of mooring revenue, suggested independently by five of them;
2. charging others based on a notional mooring fee (derived from operators' rates) and using boat length/area, plus location differences;
3. applying a different charge for the commercial letting activity of large multi-tenanted houseboats;
4. any reference to sales values must relate solely to the mooring/river works element, not the boat;
5. taking some account of the licensee's costs;
6. a simple, clear, reliable, consistent method.

In terms of dispute resolution, many felt that if the charging method were clear and fair, arbitration would be less likely. Dispute resolution needed to be speedy, accessible and inexpensive, a process which all sides can trust. Suggestions included something equivalent to rent tribunals, mediation, an ombudsman or equivalent.

Some 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, which was subsequently obtained jointly by the Steering Group – refer to 'Independent Legal Opinion' on page 20 in this report.



## Feedback from the public consultation on proposals for charging

Proposals were developed which were similar to the recommendations in this Report, with the formula being 33% of actual net or notional net mooring revenue after a 15% cost deduction (this equated to 28.3% of gross mooring revenue). The proposals broadly satisfied the principles of the licensees' and residents' points 1 to 6 above. The proposals resulted in a decrease for 9 licences and an increase for 21 licences<sup>12</sup>.

The Proposals Report was sent to licensees along with an estimate of their individual assessment (excluding site-specific factors) using the proposed charging method, so that they could see what it would mean for them. It was also sent to a broad range of other interested parties.

The public consultation resulted in responses relating to 19 licences (also representing 16 houseboats), 57 houseboats (who were not licensees or co-licensees) and 17 others. The consultants also arranged 16 meetings with a total of 49 people (and phone calls with 2 others). This was considered a good level of response.

### There were a range of views:

- a minority supported the approach;
- some people agreed with some of the principles, but not necessarily the amounts proposed;
- many disagreed with some of the basic principles adopted and also the amounts proposed.

### The points of disagreement centred on:

- 'best consideration' only applies at arbitration;
- the actual use is agreed when the licence is signed and an increase cannot be applied in relation to the potential value;
- disagreement with the valuation approach; the third share for the PLA was too high, since the licensee brings the capital, takes the risk, and the PLA make no financial contribution;
- the PLA were acting too commercially and using their monopoly position;
- *actual* costs should be allowed and are higher than 15%; capital costs should also be allowed;
- comparisons with other navigation authorities' charges showed that the charge should be lower;
- they queried data in the report saying some was incorrect/selective/missing;
- site specific factors needed to be taken into consideration;
- width should be a variable and the formula should use boat area;
- the estimate for some licences which had been reviewed in the last few years showed an increase; the licensees believed their last review had been settled at 'best consideration' and questioned the justification for a further increase;
- the affordability issue was raised and the need to consider those living afloat.

## What changes were made as a result of the consultation?

The consultants issued a response to the consultation including a detailed set of Questions and Answers to address the points made and questions put to them. It also included a list of all the changes made. It can be found at [www.pla.co.uk/houseboats](http://www.pla.co.uk/houseboats).

The response forms and meetings provided a rich source of feedback which the consultants considered in detail. Some of the points listed above were addressed in the Proposals Report, and several others have since been amended or written more clearly in this Recommendations Report, including some minor data corrections and the inclusion of 5 other licences. The PLA's share of net value was changed from 33% to 30%, which equates to a change from 28.3% to 25.5% of gross mooring value (the rationale for this is explained in 'Share of Net Value' on page 45). The calculation and application of the notional mooring fee has also been modified. Whilst these changes may seem small, the combined effect would result in an estimated decrease or small increase in charge for half of the 35 licences most of which have been reviewed more recently. Of the remaining licences, the larger increases tend to be for licences which have not been reviewed for over 10 years.

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<sup>12</sup> Five licences were excluded from the analysis in the Proposals Report because it was understood they were in the process of transition to a new head licence. However it is now understood that this has not taken effect. Several of the licensees responded to the consultation. The five licences have been included in this report.

## The principles for the charges

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In relation to the points of principle raised during the consultation and throughout the review, it has always been clear that there are strong-held beliefs about what should be the correct principles for charging for River Works Licences.

It is important to remember that the following issues had to be taken into account, in addition to the views of licensees, residents, PLA and members of the Steering Group:

- The provisions of the Port of London Act 1968
- The independent legal opinion which stated that *‘the underlying objective of the provisions in section 67 is to ensure that the PLA is required to charge what is the best consideration on the defined basis...’* meaning *‘best in monetary or commercial value’* that can *‘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...’*
- Government guidance on how Trust Ports should set their charges (*Modernising Trust Ports, 2009*)
- By granting a RWL, the PLA enables a mooring to be created, and that mooring has a value (actual or potential). The licensee benefits from the value created.
- Since they own the river bed, the PLA is entitled to a share of the current market value as set out in the licence agreement.
- The PLA is not able to set reduced or ‘affordable’ charges.

It is also important to place the feedback received in context. Of the written consultation responses received relating to 19 licences, 15 were estimated to have an increase. No responses were submitted or meetings held with 9 licensees out of the 30 licences to which the formula would have applied. It should also be noted that 9 licences were estimated to have a decrease, just under a third of the 30 licences to which the formula would have applied.

It will be impossible to recommend an approach that everyone will agree with because not everybody likes or accepts the principles. However, in the consultants’ independent, professional view, these principles above set the parameters for the charging methodology. They therefore remain the underlying principles for this Recommendations Report.

The aim is, and has been, to develop a clear, consistent, reasonable approach to charging, given the parameters we have to work within.

## Charging options

A range of options for the charging method were identified and assessed during this review, some of which were suggested by licensees or were previously considered by the PLA. They are summarised and assessed below. The first option is the recommended 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 RECOMMENDED 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 similar to 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.

It 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 of the houseboat rent 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 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 owner-occupied houseboats. There is not a sufficient spread of let houseboats along the river. The evidence available most often is the advertised rental prices and therefore a less accurate reflection of value than actual agreed rents would provide. The approach, based on letting value of the houseboat itself could not identify qualities which add value to individual boats and there was no way to remove these from the calculations.

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

Whilst the legal opinion did 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 sale 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 a County Court.

### 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.

### 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 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 pre 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. A mooring matrix to which operators add their sites, including location, facilities, boat sizes... It could include sites on other London waterways. Licensees could then enter their details to see where they ‘fit’ in the matrix, thus deriving a notional fee and dealing with each site’s circumstances.**

This proposal was explored, but it became clear that the results would be ambiguous because of the inconsistencies in the mooring providers’ fees and approaches to pricing.

**12. Apportion the PLA’s current total revenue from residential RWLs across the licensees by their area of waterspace occupied with adjustments for location.**

In some respects, this was not too dissimilar to proposal 9. Calculating the area of waterspace occupied is an alternative measurement to boat length, although this could lead to dispute over how to draw the boundary – boat length is more readily identifiable and is how the market sets mooring charges. The adjustments for location were the same approach as in the proposal. However there are no comparable rates for square metre of waterspace occupied for residential moorings in London. Also, to assume that the PLA’s **current** total revenue is best consideration for all licensees is incorrect - some licences have not been reviewed for many years; some others would have a reduction under the recommended approach.

**13. 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.

## Recommended Charging Method for River Works Licences for Residential Use

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A formula has been developed to determine the annual River Works Licence charge:

**30% of actual net or notional net annual mooring revenue**

Whilst this is a simple formula, it is based on several key factors:

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

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

The deduction for costs is 15% in 1 and 2 above, and subject to individual assessment for 3.

A notional London-wide gross mooring fee is derived from a range of competitively priced residential mooring sites across London.

This is adjusted using location and site-specific factors for each site, plus boat widths.

The approach to each type of licensee is set out in the diagram on the next page.

Each element of this formula is then discussed in detail in the section that follows.

It should be noted that this formula cannot be applied to any licences with specific terms relating to the charge such as a specified sum or percentage of mooring fees. However it would apply to licences which refer to an annual sum *‘from time to time agreed or assessed in accordance with the PLA Act 1968 s.67’*, which is the case for many of the licences.

**This formula equates to 25.5% of gross actual or notional mooring revenue**

For example:

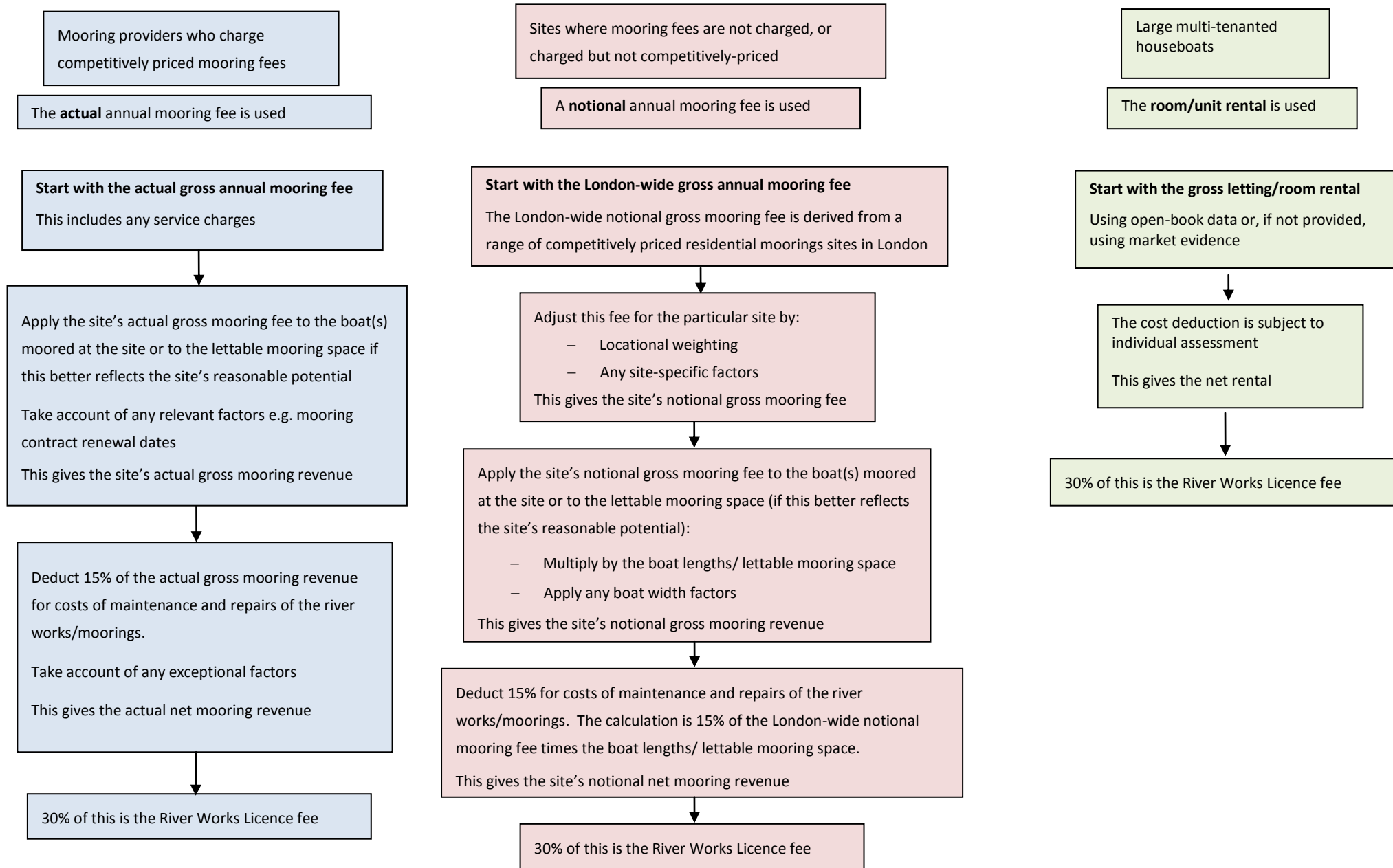
Say gross mooring revenue = £1,000

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

30% of the net £850 = £255

£255 is 25.5% of the gross £1,000

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



## Actual annual mooring fee

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In principle, the formula should be applied to mooring providers who charge annual mooring fees. This is an estimated ten licensees accommodating c.150 houseboats (around half of all houseboats on the tidal Thames). An exception would be if the licence stated a specific approach to setting the charge was to be used at review.

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 whereas 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 appropriate 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 on page 42).

Having spoken with most of the mooring providers on the Thames, it is understood that some take a commercial approach while others have said they adopt a softer approach to their fees, charging less than they could achieve.

The legal opinion said that the assessment is to be '*... one generally reflecting the market value for the mooring*' and '*... consideration of the potential mooring rents which could be achieved...*' Therefore the objective is to establish whether the actual mooring fees are at their potential market value, in which case the actual combined mooring revenue would be used, or if they are below reasonable potential value, in which case the notional mooring fee would be applied.

Although it is a potentially subjective approach to decide which sites are market-priced, the consultants found it relatively straightforward to establish during discussions with the mooring providers. As an additional consideration, the notional mooring fee could be derived for the site, taking into account any site-specific factors, and compared to the actual mooring fees. It will be very important to distinguish between a site's fees that are below market rate because of the operator's approach, and fees that have been 'marked down' out of necessity because of site-specific factors and actually reflect the market rate that could be achieved in those circumstances. If the PLA was to apply the notional fee instead of using the actual fee, and the licensee disagrees with the approach, the licensee could take the matter to the dispute resolution panel.

Many licensees who charge mooring fees usually set their rates on the same date each year, but the revised rate may only take effect for their individual moorings/sub-licences later in the year, on each mooring contract's renewal date. The licensee's actual mooring revenue during the year would therefore not be as much as the fee calculated at the date of the River Works Licence review. Whilst it may be open to the licensee to reorganise the sub licence review dates to coincide with the review of the main licence, terms of the sub-licences may preclude this, or it may be impractical. The licensee would be faced with either guessing how the fee may change at review and adjusting sub-licensees' fees accordingly or else accepting the shortfall. In recognising such difficulty it is suggested that this particular circumstance may need to be considered as a site-specific factor. It is also important to consider the timing of the River Works Licence charge notification to the licensee each year in relation to their own fee-setting.

Once the actual gross mooring revenue is established, the remaining steps are to:

- Deduct 15% for costs of maintenance and repairs of the river works/moorings and take account of any exceptional factors to give the actual net mooring revenue;
- Take 30% of this actual net mooring revenue as the River Work Licence fee.



## Notional annual mooring fee

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A **notional** annual mooring fee would be applied where annual mooring fees are not charged, 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).

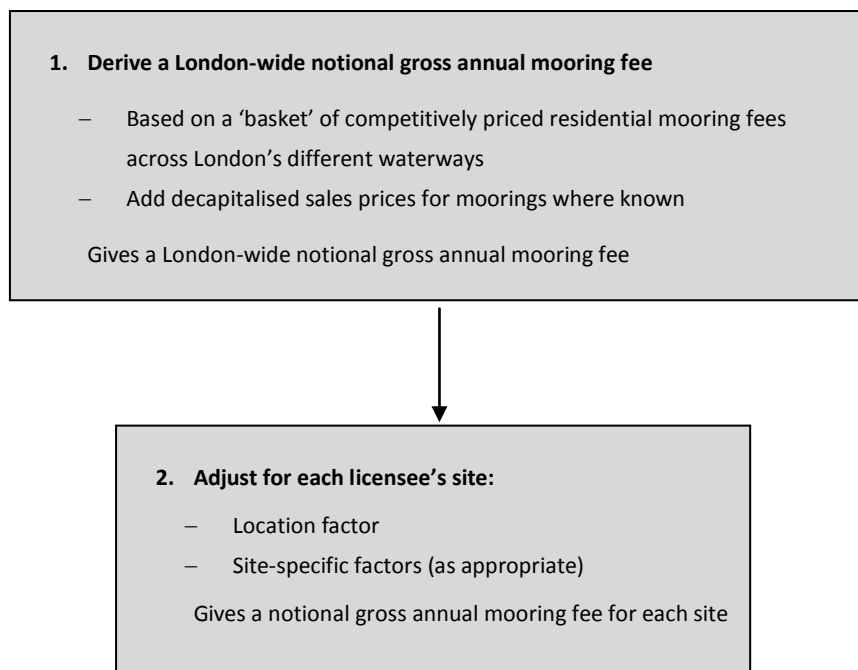
Clearly this group do not charge themselves a mooring fee, but the aim is to establish a value for their River Works Licence charge. The legal opinion was that the assessment for River Works Licences is ‘... *one generally reflecting the market value for the mooring in the particular location in which it is situated.*’ It also said ‘... *thus the circumstances would include consideration of the potential mooring rents which could be achieved as a result of the works to be licensed.*’ The objective is therefore to estimate the potential market value that could reasonably be achieved. As set out in the previous section, the notional annual mooring fee also would be applied where a licensee’s actual mooring fees were considered to be below reasonable potential market value.

The approach of a notional mooring fee was proposed by some licensees during the initial consultation for this review and also in 2006. This principle has previously been addressed in 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.*’

The recommended approach is to derive a London-wide notional mooring fee and then adjust it for each mooring site to derive a notional site mooring fee.

### Deriving a licensee’s notional gross annual mooring fee

The steps to deriving a licensee’s notional gross annual mooring fee are below:



This process is explained below:

## **1. Deriving the London-wide notional gross annual mooring fee**

### **The 'basket' of competitively priced residential mooring fees across London**

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).

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 19 sites, where fees are published or openly disclosed. This is a reasonably sized sample to provide the basis for the notional mooring fee. The rates used were the gross mooring fees exclusive of VAT. Service charges were also included on the few sites where they were made, although most operators charge just the one fee.

Sites which were considered but excluded were those which are understood to charge below the potential market rate, where the operator said they adopt a softer approach to their fees and sites with rates far outside the range (above and below) which would have skewed the result. Additionally, in some cases the fee is 'marked down' because of specific factors at the site. Such fees should not be used as a benchmark for other sites which don't have those factors. Although it is a potentially subjective approach to decide which sites are market-priced, the consultants found it relatively straightforward to establish during discussions with the mooring providers. If licensees felt that other sites should be included in the basket, or if they disputed the amount or calculations, they could refer the matter to the PLA and then, if necessary, the Dispute Resolution Panel.

The majority of sites charge by linear metre, so the notional mooring fee would also be on this basis.

### **Land-based facilities and other site factors**

A few sites in the basket have some land-based facilities such as toilets and showers; a few include parking in the mooring fee but this is generally for outer London sites where parking is less of a premium (note that any supplementary parking charges have not been added to the mooring fee). Whilst a few sites may have advantages, they may also have disadvantages. For example the boaters have to cruise to a pump-out, the mooring licence is only for 6 months, boats cannot be sold on the mooring, the site accommodates narrowboats only, the maximum boat length is 17 metres... Overall, all sites have some 'pluses and minuses'. People's views on whether they are a plus or a minus, and how much they are worth, are subjective and will vary. Therefore it was not possible to identify a reasonable value for each perceived advantage or disadvantage, and to adjust upwards or downwards with any objectivity.

### **Differences between waterways**

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. There are many different factors, for example the canals have a more enclosed setting, being closer to public activity on the opposite towpath (since the canals are around 25 metres wide), boats pass close by, creating some wash, and boat size is restricted, although the water level is constant. Mooring on the tidal Thames offers a wider waterway with an open setting which can accommodate larger boats, although river conditions can include currents, floating debris, tidal flows and grounding, along with wash from river traffic.

As stated earlier it is a complex and potentially subjective exercise to isolate and quantify the degree of difference between waterways and to make any adjustment, particularly when the mooring fees reflect many other factors such as location, and people's preferences vary so much. Therefore 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 (simply being there) unlike compared to the tidal Thames where no such charge is made. It 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 for a 20 metre boat equates to £33 per metre ex VAT<sup>13</sup>. The EA annual boat licence is £16.66 per square metre<sup>14</sup>, of which houseboats pay 50%. The licence for a 20m x 3.7m boat is £1,233 which equates to say £31 per linear metre (allowing for the 50% discount).

### Location

Another factor affecting the price of each site in the basket is its location in London. Some sites command higher rates for their location. The option of making locational adjustments to sites in the basket 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 sites which lay far outside the price range.

### 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.

### Publishing the London-wide notional gross mooring fee

The list of sites is provided in Appendix I. It is believed this is a reasonable group to use going forward and is based on research and discussions with mooring providers. Of course some sites may be added or removed each year as circumstances change.

We recommend that the PLA publishes the London-wide notional mooring fee, and the details from which it is derived each year in a similar format to Appendix 1. This will be open to validation since the sites' fees will be openly disclosed or published, and can be disputed via the Dispute Resolution Panel. In terms of timing, it is essential to have fixed dates each year. We recommend:

The new charges take effect from 1<sup>st</sup> January each year. Before this date, time must be allowed for the PLA to research and publish the fee, plus time in case it is disputed. Therefore, leading up to 1<sup>st</sup> January are the following recommended milestones:

<b>1<sup>st</sup> July</b>	Location weightings derived from London Property Watch (best time to give the largest sample sizes)
<b>1<sup>st</sup> November</b>	To be the date when the information on fees from sites in the basket are taken and the PLA publishes the London-wide notional mooring fee that will take effect the following January
<b>1<sup>st</sup> Nov – 1<sup>st</sup> Dec</b>	Window for Dispute Resolution Panel to consider disputes to the fee and issue a decision
<b>1<sup>st</sup> December</b>	PLA confirms the London-wide notional mooring fee that will take effect from 1 <sup>st</sup> January
<b>1<sup>st</sup> January</b>	The new charges take effect

### Summary

In summary, the London-wide notional gross mooring fee is derived from a broad range of competitively priced sites across London; adjustments were investigated but could not feasibly be made other than the inclusion of BW and EA boat licence fees. On the whole, the sites and fees are within a reasonable range which reflects the tone of residential mooring fees in London, with several sites above and below the norm excluded. It is a good sized sample which makes the resulting fee more resilient to changes at individual sites.

The London-wide notional gross mooring fee is **£326** ex VAT per metre per year.  
The table listing the mooring sites from which it has been derived is in Appendix 1.

<sup>13</sup> Figures valid until 31 March 2012 <https://www.bwmooringvacancies.com/media/pdf/Published-Price-List-2011.pdf>

<sup>14</sup> Figures valid from 1<sup>st</sup> January 2012 [www.environment-agency.gov.uk/boatregthames](http://www.environment-agency.gov.uk/boatregthames)

## 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 and sample sizes were too small to provide reliable data.
5. The London Property Watch Index [www.londonpropertywatch.co.uk](http://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-bedroom<sup>15</sup> 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 page 37 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.

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<sup>15</sup> 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.

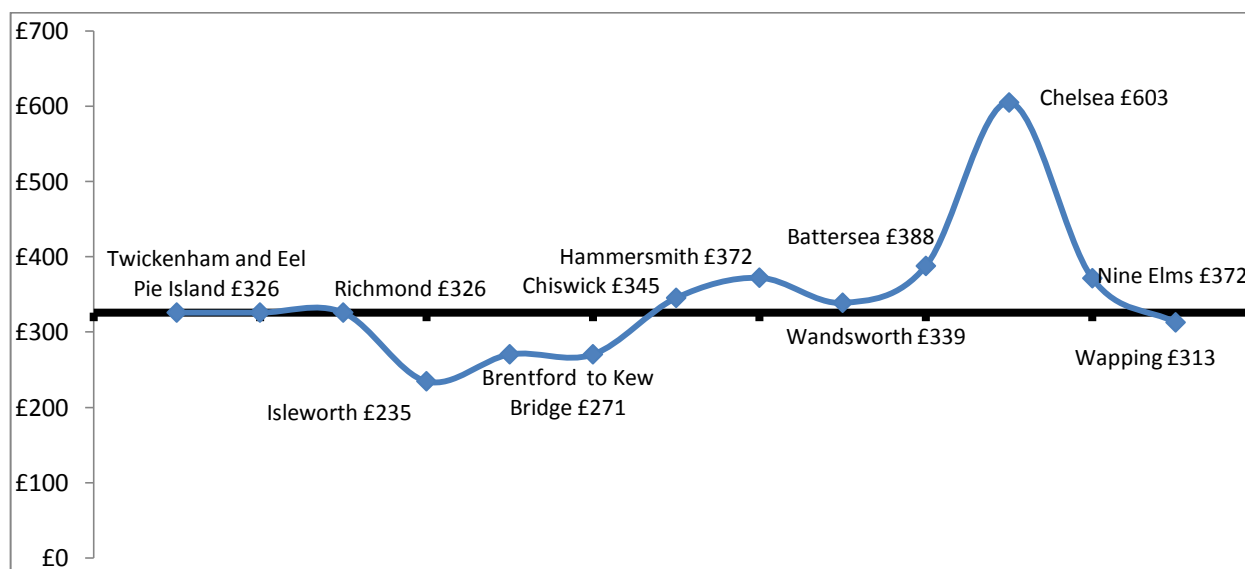
### Notional annual gross mooring fee for each location per metre per year ex VAT

The results of applying the weightings to the London-wide gross notional mooring fee of £326 for each location are shown below:

Postcode	Locations	Weighting	Notional mooring fee for the location i.e. location weighting x £326
TW1	Twickenham and Eel Pie Island	1	£326
TW1	Richmond	1	£326
TW7	Isleworth	0.72	£235
TW8	Brentford to Kew Bridge	0.83	£271
W4	Chiswick	1.06	£346
W6	Hammersmith	1.14	£372
SW18	Wandsworth	1.04	£339
SW11	Battersea	1.19	£388
SW10	Chelsea	1.85	£603
SW8	Nine Elms	1.14	£372
E1W	Wapping	0.96	£313

*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 £326*

*Note that the notional fees for each postcode are shown in the graph above (and not any actual fees charged by licensees)*

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 4% and 18% of their mooring fees (although the site with the 18% differential has provided different rates over the year of the review, one of which was within 7.5% of the notional mooring fee). Note that the notional fees are shown in the graph above and not the actual fees charged by those 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 19 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. It is not possible or appropriate to devise a 'menu' of possible adjustments for this Report since it would require a site-by-site assessment and discussion with both the licensee and the PLA. However it is important to set some principles and parameters for both the licensee and the PLA.

The factors which warrant adjustment should only be those which would genuinely affect the amount the market 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 to merit an adjustment. Sites above Richmond Half Lock are only subject to grounding one month each year which could be considered an advantage, although moorers in this stretch described the disturbance created by the annual draw-down. 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 site-specific checks are advisable to ensure that any agreed site-specific allowances are still applicable and to identify any new factors that may affect value.

It should be acknowledged that licensees want a 'menu' of site-specific factors and allowances to ensure an open and consistent application and to avoid negotiations and scope for dispute. As stated above, to devise a definitive list is beyond the remit of the review since it would require a site-by-site assessment and discussion with both the licensee and the PLA, to understand their views. However the PLA is considering this issue further.



*Hope Wharf, Chiswick/Hammersmith*

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

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### Potentiality

The legal opinion stated that *‘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.’*

The presumption would normally be that a site’s existing occupation reflects its reasonable potential, from single-boat sites to multiple-boat sites, and this is a reasonable reflection of the houseboat market. Licensees usually fill the available space to provide the greatest living space (and greatest revenue on fee-paying sites) within reason. So for the majority of cases, the question of a site’s potential would not be an issue – it is the existing occupancy.

It would be unreasonable to say that a fully occupied site could raft up more boats, for example. Or that Licensee A with a single houseboat should be charged for two houseboats just because their neighbour, Licensee B, with the same length of riverfront has two houseboats. If Licensee A wanted to add a second houseboat to their site, they would need to apply for consent to the PLA and would be charged for the two houseboats. Alternatively if Licensee A replaces their houseboat with a bigger one, they should be charged for the bigger houseboat because they are using the site and river works licence to its potential.

The down-sizing of a houseboat or of the number of boats at a site is likely to be rare – many people have said that there is a tendency to up-size whenever possible. It is not appropriate to say how the assessment should be made in this hypothetical situation. The circumstances for the down-sizing would need to be considered, and whether any amendment/supplement to the licence were required, particularly if it (or the accompanying application for the licence) specifies the number and/or size of boat(s) to be moored.

Mooring voids on established sites are likely to be rare – they are not in the licensee’s financial interest (if the licensee charges) and most houseboats are sold on their mooring. However when a mooring site is *not* fully occupied, the reason needs to be established. It may be that the licensee is not operating the site efficiently and is not achieving its reasonable potential value. In this case, it may be more appropriate to use the total lettable metres as the basis for the charging for the site, using pontoon length as the basis instead of the boats on site. On the other hand there may be a decline in demand in which case the value cannot be achieved and it may not be reasonable to charge for the space, or at least not at the full rate.

When a *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 length

On the assumption that occupation is maximised, using the boats on site reflects the notional value that could be 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). Therefore it is a simple exercise to multiply the notional mooring fee by the boat(s) in occupation once a year to derive the total notional revenue. The licensee could provide a boat schedule to the PLA which could be validated if required.

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<sup>16</sup>, if the space taken up 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 boats’ ‘extensions.’

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<sup>16</sup> For example: ‘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**



## 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 notional 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**.

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. In practice, it will be difficult for the PLA to prove that there is demand for a larger boat in the space, or indeed for the licensee to prove that there is only demand for narrowboats. On balance, a reasonable approach is for the charge to assume that the narrowboat in occupation reflects demand and site layout.

There is very limited evidence upon which to base an adjustment but from our knowledge of the market, a factor of 33% is recommended 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 10% of the 220 houseboats for which data on the width was available. (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 or with extra storeys 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	And so on ...
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	

At present there are an estimated 41 boats over 5 metres wide – this represents 19% of the 220 houseboats for which data on the width was available.

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.

It should be noted that charging by boat area (square metre) was examined but the result was disadvantageous to boats above the average width and provided more of a discount than 33% to narrowboats, as illustrated by the example in Appendix III. Furthermore, the market does not charge for moorings by square metre and therefore there are no comparables.

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

Boats 2.4 metres wide and under	A deduction of 33%
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

### Traditional boats

The types of vessel on the River can be controlled by local planning authorities. This issue is set out in section 3 of the AINA advisory document *Residential Use of Waterways*<sup>17</sup>. If an existing residential boat is to be replaced with a purpose-built structure, it may well require planning permission. In practice however, many local authorities, mooring providers and boat owners may not be aware of this.

It is clear that some houseboat residents feel strongly about this issue and they should therefore engage directly with their local planning authority. We understand that the PLA, as a navigation authority, cannot control or encourage particular styles of vessels.



Chiswick Pier Trust

<sup>17</sup> <http://www.aina.org.uk/docs/AINA%20Residential%20Use%20of%20Waterways%20Advisory%20Doc%20Feb%202011.pdf>

## Costs

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The recommended 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 costs and the appropriate treatment are discussed below.

### Maintenance and repairs

The allowable costs to be deducted from the gross mooring revenue in order to net it down need to be carefully considered. The allowable costs are solely the costs necessarily incurred in the running of the mooring, that is in maintaining and operating it. Thus the costs of cleaning, annual maintenance and repairs of pontoons and the installations, insuring the pontoons and providing electricity to the common parts as well as the costs of health and safety checks all form part of the deductible costs because they comprise the costs of running the facility.

Any administration and management is carried out by the licensee for which they receive remuneration through their share of the net mooring revenue. To make a deduction for this cost from the gross mooring income would therefore be double counting. The majority of licences are for a relatively small number of moorings and therefore to include an allowance for office costs in most instances would overstate the costs.

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.

Some licensees who charged mooring fees also made a service charge, but the elements within it varied. For example on some sites it was not necessarily entirely cost-based, on others it covered all 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).

### 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 (using the London-wide notional mooring fee which was not adjusted for the site's location because most running costs do not vary between locations). The costs as a percentage of gross mooring revenue ranged from 5% to 18%, and the average was 11%.

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 provided to the consultants.

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. The option of cost bandings was also considered but it would be difficult to distinguish clear boundary lines between different levels of infrastructure.

Therefore to keep things simple and avoid future disputes, it is recommended that this proxy cost rate of 15% should be used and applied to all licensees. In limited instances it may be possible to identify specific reasons why allowable costs should be higher on a particular site. This will need to be considered on an individual basis but it is expected that any allowance under this heading will be very much the exception.

## **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 its 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 the Net Value' on page 45.)

## **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 the Net Value' on page 45 for further explanation). With the licensee receiving the return on their capital within their one-third share of the net value it is not then appropriate to deduct cost of capital from the annual running costs. To do so would double count this element.

## **Sinking fund, depreciation, refurbishment and replacement of the works**

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.

The licensee brings their capital to enable the creation of the mooring. This cost is taken into account because the licensee receives a return on their capital, up to one third of the net mooring revenue. Over the life of the scheme, they should make provision for replacing the infrastructure (as it reaches the end of its design life) by setting aside a sinking fund.

Thus the periodic capital replacement costs should not be deducted as a cost from the gross mooring revenue. To look at it another way, if they were deducted, the licensee would not, in effect, be contributing their 'share' to the scheme. Instead, they would be requiring all three parties to fund the capital from the gross mooring revenue. This could be double counting and leave little net value remaining.

### **Land access**

The riparian land-owner contributes the use of their land for access to the river works/moorings (this is explained further in 'Share of the Net Value' on page 45). 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 already 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.

### **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.



*Ice Wharf residential moorings, King's Cross, Regent's Canal (British Waterways)*

## Share of the net value

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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 on page 43). They are:

1. the licensee, who contributes their capital and expertise;
2. the PLA, who grants the use of its 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 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). 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.

The approach is also based on existing agreements between the PLA and licensees. The consultants reviewed all of the residential agreements for new moorings entered into since the 1980s where a percentage share of the value is included in the terms. The agreements show that the percentage agreed has increased (presumably as river living has become more popular and new mooring developments have taken place). Of necessity these agreements have to remain confidential. The pattern of increase is shown below:

1980s	20% of gross mooring fees
1990s	25% of gross 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.

The newest agreements (although few because there have not been significant numbers of new residential mooring schemes over the years) have shown that new licensees were willing to go ahead on the basis of an equal split between the licensee and the PLA. This supports the concept that 33% is reasonable on the basis of each of the three parties being an essential requirement for the mooring scheme. Hence they would be entitled to an equal one-third share.

However we believe that a case may be made that the one-third share is slightly high in respect of old/existing licences. This is because the market has subtly changed in recent years to a scenario whereby the new developer sells longer term sub-licences which provide upfront capital sums helping to defray their construction costs. This is in addition to the annual RWL fee which is subject to review.

In considering the post-2000 licences which have been agreed, we believe that the receipt by a developer of capital premiums is likely to form an element in their considerations when agreeing terms with the PLA.

Such facility may not always have been open to pre-existing licences. In recognising this issue we recommend that the percentage appropriate to the PLA should be 30% of the net mooring revenue.

30% of net mooring revenue equates to 25.5% 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

30% of the net £850 = £255

£255 is 25.5% of the gross £1,000

As noted above there are reference points from earlier agreements at 25% of gross mooring fees which support this approach.

The division of the value created 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. Thus the PLA's share is capped by our recommendations so that it cannot exert its monopoly position over what it is entitled to. It also provides a mechanism for the River Works Licence fees to remain the same proportion of the value of the mooring into the future.

### **How does this compare to the rates of other port and navigation authorities, and the PLA's proposal for 16.66% in 2006?**

Firstly, the recommended formula equates to 25.5% of gross mooring value.

There is a broad range of reference points from the other navigation and port authority rates ranging from 9% to 50%. It is important to understand what exactly these rates take into account when considering their relevance and making comparisons. As set out in Part 3, there are different rates for different circumstances.

The BW 9% rate is based on the marina's capacity, not occupancy, and therefore the operator is also charged for vacant berths. Also, the boats do not occupy BW's canal-bed, they occupy the riparian land-owner's bed of the marina. Therefore one would expect this rate to be lower. The Medway Ports 12.5% charge is *in addition* to a base rent. The BW 50% 'end of garden' rates would be higher to reflect the fact that there are only two parties involved and there is usually minimal cost or risk.

The Crown's marina rates and, in fact, the other authorities' marina rates between 8% and 15% are for commercially operated marinas. Such sites normally involve considerable investment e.g. excavation, road access, parking and buildings (in addition to piles, pontoons and services) to make a marina viable. The marinas are mostly for leisure use, for which demand is arguably lower than residential moorings in London. Overall they have a different profile of use, cost and risk.

The PLA's 2006 proposal was for 16.66% of the *gross* rental value of the *houseboat on the mooring*. The recommendation is for 30% of the *net* value of *just the mooring*. The recommendation would result in a lower RWL charge than the 16.66% proposal.<sup>18</sup>

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<sup>18</sup> Dutch barge for rent in Hammersmith at £450 per week (Riverhomes, August 2011). Say a rent of £400 is agreed, giving £20,800 p.a. 16.66% of the gross rent would be £3,465 as the RWL fee. Applying our formula: notional annual mooring fee of £326 Less 15% costs gives £277 net. Multiply by 1.14 weighting for Hammersmith = £316. £316 x 25 metres = £7,900 net mooring revenue. 30% RWL fee is £ 2,370.

## Working examples

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The following examples demonstrate the application of the formula. They are purely hypothetical. They do not show any site-specific factors which may be agreed in practice. The fees are ex VAT and calculations are rounded to the nearest pound.

### **Hypothetical houseboat in Chiswick, 20m x 4.5m**

London-wide notional gross mooring fee is £326 per metre

Houseboat is located in Chiswick, so multiply £326 by 1.06 gives £346 for the site's notional gross mooring fee

Houseboat beam is 4.5 metres so no width adjustment

Houseboat is 20 metres long so multiply £346 by 20 = £6,920 notional gross mooring revenue for the boat

Calculate costs: 15% of £326 is £49 costs per metre                      Multiply by 20 metres gives £980 costs

£6,920 notional gross mooring revenue less £980 costs gives £5,940 net notional mooring revenue

30% of which is the River Works Licence charge of £1,782

### **Hypothetical houseboat in Wandsworth, 27m x 6.5m**

London-wide notional gross mooring fee is £326 per metre

Houseboat is located in Wandsworth, so multiply £326 by 1.04 gives £339 for the site's notional gross mooring fee

Houseboat beam is 6.5 metres so adjust £339 by +30% (3 increments of 10% for each half metre above 5 metres) = £441

Houseboat is 27 metres long so multiply £441 by 27 = £11,907 notional gross mooring revenue for the boat

Calculate costs: 15% of £326 is £49 costs per metre                      Multiply by 27 metres gives £1,323 costs

£11,907 notional gross mooring revenue less £1,323 costs gives £10,584 net notional mooring revenue

30% of which is the River Works Licence charge of £3,175

### **Hypothetical houseboat in Brentford, 22m x 2m**

London-wide notional gross mooring fee is £326 per metre

Houseboat is located in Brentford, so multiply £326 by 0.83 gives £271 for the site's notional gross mooring fee

Houseboat beam is 2 metres so adjust £271 by -33% for narrowboats under 2.4 metres = £182

Houseboat is 22 metres long so multiply £182 by 22 = £4,004 notional gross mooring revenue for the boat

Calculate costs: 15% of £326 is £49 costs per metre                      Multiply by 22 metres gives £1,078 costs

£4,004 notional gross mooring revenue less £1,078 costs gives £2,926 net notional mooring revenue

30% of which is the River Works Licence charge of £878



## Individual licence reviews

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For all licensees whose licence terms refer to a 'sum to be agreed from time to time' the formula would be applied each year to determine their annual sum payable. For those licensees whose licences include different terms, e.g. a percentage of mooring income, the formula would also be applied each year using their actual mooring fee or by applying the notional mooring fee to their site.

The formula is the only calculation each year. RPI or other adjustments are not relevant because the charge will track market values of residential mooring fees in London (which could go up or down) and it will be up-to-date each year. This replaces the previous practice of periodic reviews of the licensees' charges using comparables and applying RPI or a similar index between reviews.

Only occasional site-specific checks are advisable to ensure that any agreed site-specific allowances are still applicable and to identify any new factors that may affect value.

It should be noted that the terms of some licences stipulate a specific review pattern, usually five-yearly, with annual adjustments to the fee between reviews, usually RPI. In these cases, the formula could only be applied on the review date, for example every five years. The PLA and licensee are 'locked in' to these licence terms, which does create a degree of inconsistency between fees paid by licensees, which is unavoidable, but at least the method of charging is consistent. The licensee could approach the PLA with a view to varying their licence terms if they wanted to.

In summary, 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. There is no scope for a licensee's fee to lag behind, requiring them to catch up after a review. 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 relatively stable:

1. The London-wide fee is derived from a large sample of 19 sites (see Appendix I), therefore any significant changes at an individual site, or the addition of new sites, will have less impact on the overall fee.
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.

## Review of the effectiveness of the recommended charging methodology

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If the recommended charging methodology were to be adopted, it is recommended that a basic review of its effectiveness is undertaken two to three years after its implementation. Care needs to be taken to ensure that the methodology and each element of the formula remain appropriate. After this review, a suitable time period should be agreed for the subsequent review, which could be anywhere between five and ten years. There needs to be a willingness from all sides to openly review the scheme.

## Large multi-tenanted houseboats

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There are a few large purpose-built floating structures or vessels divided into units on the River which are occupied by multiple tenants and operated on a commercial basis. It is recommended that these multi-occupied houseboats should be defined as having three or more rooms or units 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 a houseboat for occupation by one household. 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. Alternatively, if the licensee is unwilling to open their books, this will require the PLA to use reasonable estimates and market evidence of lettings in order to arrive at the River Works Licence charge.

## New licence agreements

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For new agreements, the recommended charging method should apply to the annual charge.

It is essential to ensure that the terms for new developments are open enough to enable *both* the developer (prospective licensee) and the PLA sufficient flexibility to agree terms as appropriate at the time. Within the context of a new development both parties need to be able to negotiate the viability of a proposal with sufficient manoeuvrability to ensure that the project can take place. To be too prescriptive could restrict developments and thus restrict supply of new moorings. For this reason we therefore recommend that the charging method should apply to the *annual charge* for new developments, but that additional terms can be freely negotiated.

Much better predictability of the annual charge will enable reasonable and more reliable assessments of viability and negotiations.

Another result will be that prospective moorers at a new site would be better able to make an assessment of what they are prepared to pay for any premium because they will know what the annual sum is likely to be (by applying the formula).

## Assessment of the recommendations

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The terms of reference required the recommendations 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.

During the review and public consultation, it has been clear that there are some fundamental principles that some people dislike or simply do not accept. Therefore it is impossible to recommend an approach that everyone will agree with. However, in the consultants' independent professional view, these principles set the parameters for the charging method.

Our aim is, and has been, to develop a clear, consistent, reasonable approach to charging, given the parameters we have to work within. The recommendations are therefore assessed below on that basis.

### Merits

- 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 and equitable formula for all 35 licences (out of the 41 where it can be applied) despite the great variety of licensees and mooring arrangements. It provides scope for each individual situation to be assessed on its own merits within a consistent framework.
- Actual mooring revenue is clear, unequivocal and easily validated.
- Notional mooring revenue is estimated reasonably by using market-based mooring fees, which are the prime indicator of value. They are set by the market with the PLA having no influence on the majority of the fees.
- It is based on prevailing market values, which are easy to monitor and therefore transparent. Thus the charge tracks market movements (and could go down or up) and requires no other adjustments. It is also likely to be a stable method since the two elements on which it is based are stable:
  - i. It is derived from a large sample of sites, therefore any significant changes at an individual site, or the addition of new sites, will have less impact.
  - ii. 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 annual sum payable is always current. Periodic reviews are no longer necessary (unless stipulated in a licence).
- It requires a simple annual review of published residential mooring fees across London, and the London Property Watch values, which is also more cost-effective for the PLA to administer.
- It is comparable with established industry practice among other navigation and port authorities whose charges are based on a percentage of mooring revenue.
- 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 reduces 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.

## Demerits

- Using the notional mooring fee and location adjustments is not a perfect model for estimating market value. However there are too few comparables on the tidal Thames to provide sufficient mooring fee comparables, which are considered the prime indicator of value.
- It is a subjective approach to decide which sites are competitively priced and included in the basket for the notional mooring fee each year. However reasonable justification needs to be provided for excluding sites, if challenged.
- The locational adjustments rely on London Property Watch, but after research, this site was chosen because it offered very good sized samples per postcode which avoids any anomalies skewing the result in smaller samples. Potentially the site 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.
- The approach does not include a 'menu' of site-specific factors and allowances to ensure an open and consistent application and to avoid negotiations and scope for dispute. However, to devise a definitive list is beyond the remit of the review since it would require a site-by-site assessment and discussion with both the licensee and the PLA, to understand their views. However the PLA has asked the consultants for further recommendations.
- One cost deduction rate for all is a very general approach. However the alternative of using actual costs would require detailed scrutiny of accounts each year and could well result in dispute over which items are admissible and the reasonableness of the costs. Cost bandings were also considered but it would be difficult to distinguish clear boundary lines between different levels of infrastructure.
- Where a mooring provider charges mooring fees, it is a subjective approach to decide whether their rates are market-priced and to use their actual mooring fee or whether to apply the notional fee. However the consultants found it relatively straightforward to establish during discussions with the mooring providers. If the PLA were to apply the notional fee instead of using the actual fee, and the licensee disagrees with the approach, the licensee could take the matter to the Dispute Resolution Panel.
- The approach for large multi-tenanted boats relies on the licensee providing the necessary information, and that the PLA has limited power to require its provision. If so, the PLA will need to use reasonable estimates and market evidence of lettings. It is potentially a subjective judgement on what constitutes a large multi-tenanted houseboat, but the recommended definition is houseboats with three or more rooms/units for let (based on current information).

## Dispute resolution

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The principles of the recommended formula have taken over 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 public consultation highlighted some disagreement with some of the principles of the formula, but the Dispute Resolution Panel will not be sufficiently conversant with the issues to competently consider them and make a recommendation on the principles of the formula. Therefore it has to work within the parameters of the formula.

The public consultation showed interest in an Ombudsman, which the PLA should note and consider. The likely remit of an Ombudsman in relation to River Works Licences would be to consider how the PLA administers its stated policy and procedures. Their role could therefore partly duplicate that of the Dispute Resolution Panel proposed below. However the Panel would arguably be more appropriate and better equipped for the task of making decisions on application of the formula and value, since it would be chaired by the Valuation Office Agency.

The Panel would focus on the potential areas for dispute:

### 1. The elements of the formula

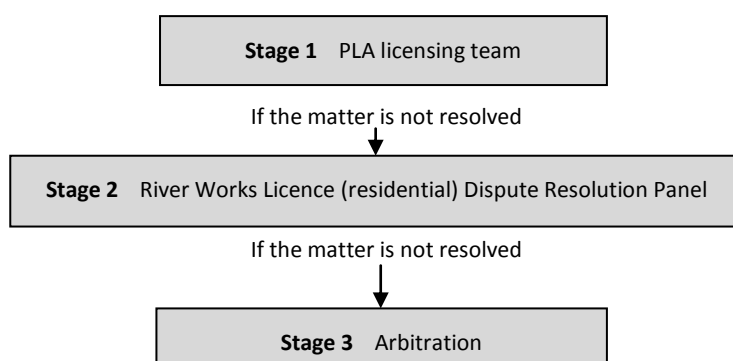
Each year the PLA will publish how it has recalculated the London-wide mooring fee, including the sites included in the basket, the published rates of the operators and location weighting index that it has used. These can be easily validated since the information would be in the public domain, and challenged with suitable evidence. Licensees would also have the opportunity to challenge why certain sites have been excluded from the basket and the method of any decapitalised premiums that the PLA may include. There is a recommended timescale in the section 'Notional Annual Mooring Fee' on page 34 which sets out key dates including a window for disputing the London-wide mooring fee before it takes effect.

### 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. These are all issues which could be referred to the Dispute Resolution Panel.

## Dispute resolution

If a licensee disputes any elements of the formula or its application as outlined above, a three-stage dispute resolution process is recommended as below. There should be a specified time limit for both parties to comply with at each stage.



### 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 licence;
- 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 Resolution Panel**

Note that the PLA should also be able to refer cases to the Dispute Resolution Panel if, for example, a licensee has ignored PLA notices of review, or has simply registered an objection within the specified time. Whilst the Dispute Resolution Panel route to sorting out disputes is available it should be noted that this is not the method set out in the PLA Act; that remains arbitration and as such is always open to either party to pursue. It is anticipated that the PLA would only use arbitration as a last resort and after reference to the Dispute Resolution Panel had been unsuccessful in resolving a dispute.

At stage 2, both the licensee and the PLA licensing team put their case and supporting evidence to the Panel. Each party may elect a representative in preparing their case and/or attending the panel.

### **Panel members**

It is recommended that there should be three members of the Panel. There were mixed views from the consultation as to its composition. We believe that the chair should be the District Valuer since the issue centres on establishing a value for River Works Licences. In relation to the other two members, either both the licensees and the PLA are represented, or neither. We tend to agree that the panel would be fully independent if neither were represented, and in any case, both parties will be making their representations to the panel during their case. The remaining two members would need to assess the cases neutrally, have no financial or other close interest in the outcome of the case or River Works Licences generally, and no sympathies with just one side. They must also have the necessary skills. Suggestions include representatives from the business community e.g. CBI, local Chamber of Commerce, a local business, accountant, property professional, regeneration agency e.g. London Thames Gateway, or suitable person from an interest group such as the River Thames Society. Local councillors or MPs could be considered but may be unable to commit the time.

### **Panel's remit and costs of the process**

The Panel's remit is to consider the dispute within the context of the formula as set out earlier, and provide a decision.

Arguably the Panel's work is straightforward since the areas for dispute would be 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. The two parties in dispute (the licensee and the PLA) would pay their own costs to prepare and present their case, which may include their respective experts or representatives.

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 would be required to fund the panel's costs. Therefore the cost of the Dispute Resolution Panel itself would normally be free for the licensee other than vexatious cases.

If adopted, the above principles would need to be developed into a more detailed procedure with clear requirements, format for presenting the case 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.

During the public consultation, it was suggested that the Panel should be extended to other types of River Works Licences. The practicality of this will depend upon the method for setting charges for other types of River Works Licences, but we recommend that the PLA only considers this once it has been established and begun to work effectively.

## **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 recommended formula

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The recommended 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:

- 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.
- 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.
- The **passing consideration with effect from 1<sup>st</sup> October 2011 has been used as the current charge** against which to compare the effect of applying the recommended formula.
- In order to correctly compare the current charge with the recommended 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, and the percentage specified in the licence has been used.
- An adjustment of **33% has been applied to all narrow boats** under 2.4 metres wide and 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 (as explained in 'Part 4 on page 40').
- The analysis **excludes any site-specific factors**, which would be likely to reduce the estimate for some licences.
- It has not been possible or appropriate to apply the recommended 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 recommended formula. The large, multi-tenanted houseboats will require individual assessments. The analysis in the graphs is therefore shown for 35 licensees.
- The fees are exclusive of VAT.

## The results of applying the recommended formula

Of the 35 licences to which the formula can be applied, there would be:

No. of licences	% increase/decrease		Date of last review	Amount of increase/ decrease <u>per boat</u> at the sites	No. of houseboats
13	0% – 37%	decrease	Between 2005 and 2009	–£4 to –£1,562	23
9	2% - 27%	increase	Between 2004 and 2009 (and one in 1998)	£18 to £360 *	106 *
6	39% - 63%	increase	Between 2000 and 2008	£392 to £1,098	30
3	134% - 184%	increase	1995, 1996 or 1997 and one not subject to RPI since	£843 to £2,139	15
4	245% - 378%	increase	between 1994 and 2000	£1,475 to £2,444	4

\* One licence cannot be analysed 'per boat' because the basis for the assessment is metre length of pontoon.

The full list of the change in charges to each licence resulting from application of the recommended formula is in the table on the next page, followed by further analysis.

## Change in revenue for the Port of London Authority

If the recommended charging method were to be adopted, the resulting change in revenue for the Port of London Authority based on the total of the 41 River Works Licences for residential use is set out below:

Total of the decreases	£7,226
Total of the increases	£75,600
Total net change	£68,374
Current total revenue	£367,828
New total revenue	£436,202
Percentage increase	18.6%

Note that the totals above:

- include the 35 licences where the recommended formula can be applied
- include the 6 licences where it was not possible or appropriate to apply the recommended charging formula (as explained in the beginning of this section); in these cases the current fee is used
- exclude any site-specific factors, which would be likely to reduce the estimate for some licences
- exclude any phasing, therefore this is the total effect of the potential changes without any phased payments

It is important to understand the context for the potential increase of 18.6%. For example, the charges for ten licences were last assessed between ten and seventeen years ago, therefore a market-based assessment after such a long period will inevitably result in larger increases for those licensees in comparison to those with more recent assessments. Over half of the total increase is attributable to these ten licences.

There are also both some increases and decreases for several licences which have been reviewed more recently, which possibly demonstrates some variations arising from previous valuations.

### Summary

The combined effect would result in an estimated decrease or small increase in charge for half of the 35 licences, most of which have been reviewed more recently. Of the remaining licences, the larger increases tend to be for licences which have not been reviewed for over 10 years. The recommended formula would bring an equitable approach to all licences where it can be applied.



## Changes in licence fees resulting from application of the recommended formula

Year of the licence's last review	Current charge per boat at the site	Increase/decrease per boat at the site	Percentage change	Estimated amount per boat (second column + third column)
2009	£4,180	-£1,562	-37%	£2,618
2006	£1,131	-£385	-34%	£746
2008	£1,463	-£409	-28%	£1,054
2006	£1,603	-£402	-25%	£1,201
2008	£4,029	-£992	-25%	£3,037
2005	£3,099	-£619	-20%	£2,480
2005	£3,315	-£592	-18%	£2,723
2005	£2,975	-£522	-18%	£2,453
2005	£2,192	-£294	-13%	£1,898
2008	£615	-£62	-10%	£553
2005	£1,967	-£161	-8%	£1,806
2005	£935	-£15	-2%	£920
2006	£1,864	-£4	0%	£1,860

2005	£1,193	£18	2%	£1,211
2004	£1,327	£40	3%	£1,367
2005	£1,004	£94	9%	£1,098
2009	£1,620	£239	15%	£1,859
2005	£1,445	£254	18%	£1,699
2007	£1,941	£360	19%	£2,301
1998	£658	£129	20%	£787
2008	*	*	22%	*
2005	£804	£221	27%	£1,025
2004	£995	£392	39%	£1,387
2000	£1,447	£580	40%	£2,027
2003	£2,226	£1,098	49%	£3,324
2008	£1,661	£821	49%	£2,482
2007	£1,568	£841	54%	£2,409
2001	£1,643	£1,043	63%	£2,686
1997	£1,600	£2,139	134%	£3,739
1996	£536	£843	157%	£1,379
1995	£665 ***	£1,225 ***	184% **	£1,890 ***
2000	£601	£1,475	245%	£2,076
1995	£639	£1,964	307%	£2,603
1994	£664	£2,444	368%	£3,108
1994	£557	£2,102	378%	£2,659

### Notes

\* The basis of this licence'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.

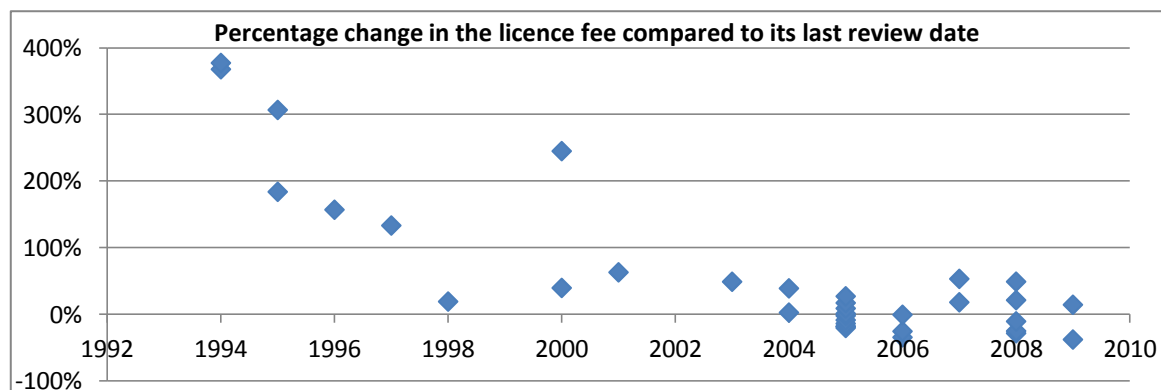
\*\*\* The basis of this site's assessment is the total metre length of mooring, which is not too dissimilar to the total metre length of boats on site, so the effect of applying the formula has been shown per boat but is an estimate.

There is a large variation between the estimated 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.

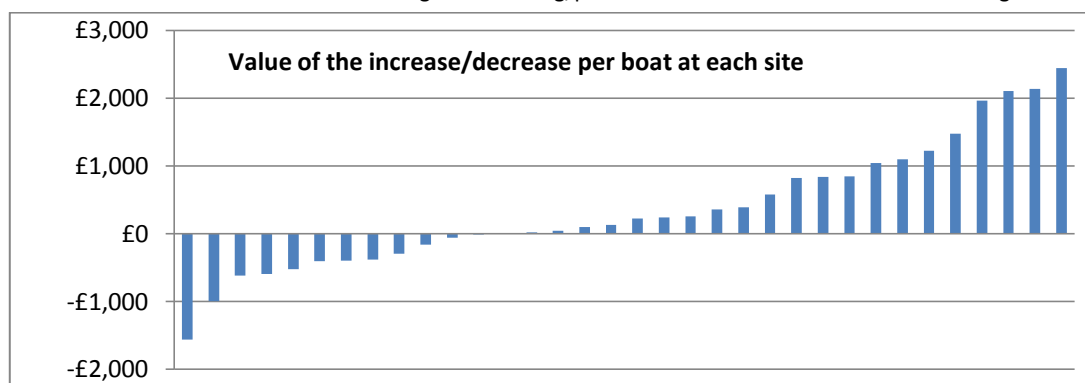
## Analysis

It is important to consider the level of change in the charge 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. To put the percentages into context, they are shown against the last review date of each licence in the graph below.



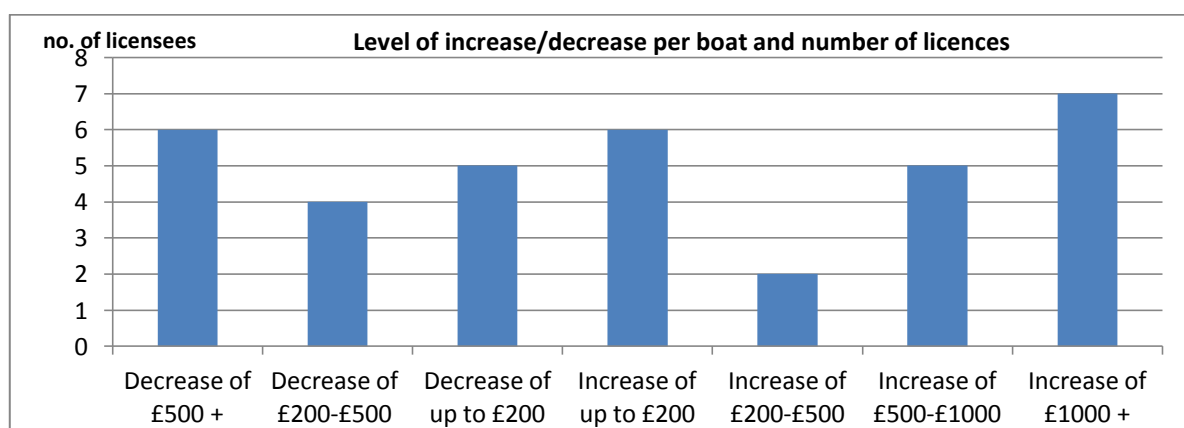
*Example - the increase in the consideration at a site that was last reviewed in 2003 would be 49%*

It is important to consider the **actual** amount of potential change to each licensee's fee, rather than just the percentage, but this is only meaningful when the number of boats at each site is known. However to do this would enable the site and licensee to be identified, which is inappropriate. Therefore to understand what the recommended 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 25 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.



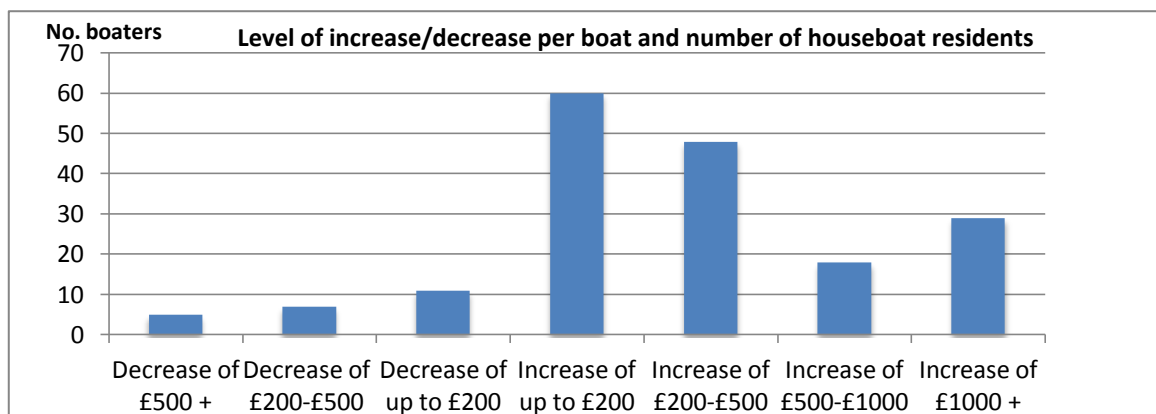
*Example – at the second site (second blue bar) the decrease would be £992 per boat at that site*

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.



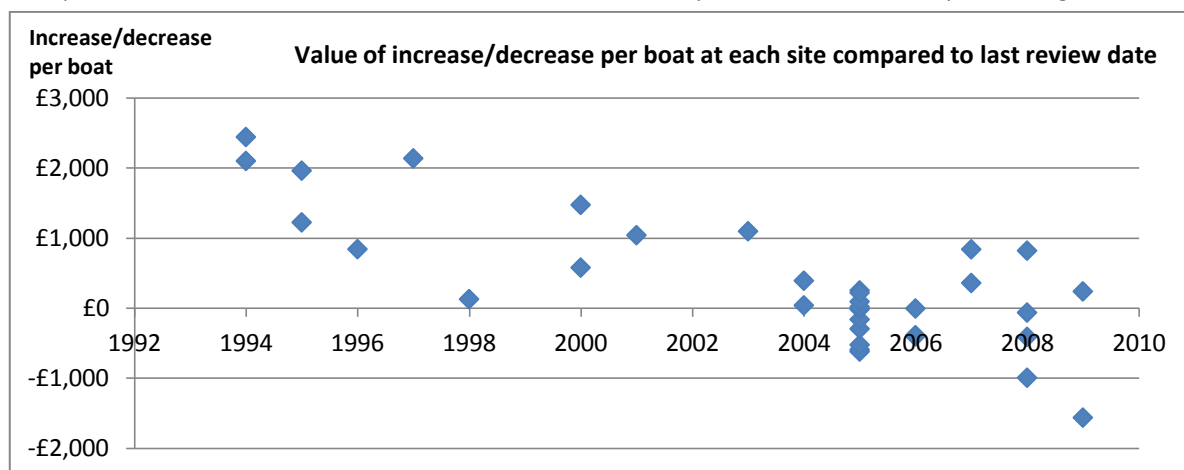
*Example: Five licensees would have an increase of between £1 and £200 per boat at their sites*

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:



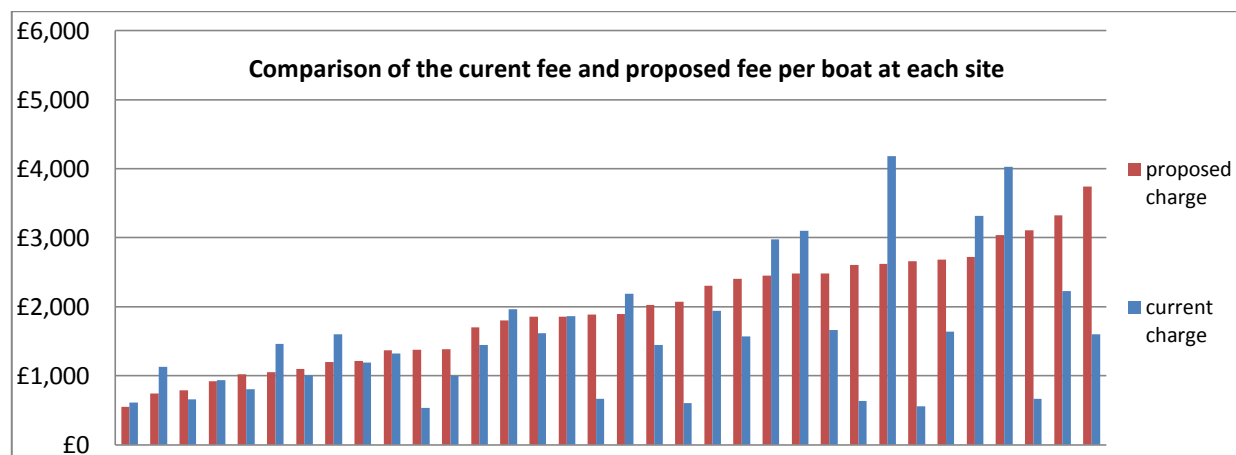
*Example: 60 boaters would have an increase of up to £200. Note that the graph cannot include houseboat residents at the six licensed sites where the formula cannot be applied, therefore the total of houseboats above is less than the total 280.*

As with the percentage changes, it is also important to set the increases or decreases within the context of the licence's last review date. 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 £1043 per boat.*

The final graph compares the total amount being paid currently per boat at each site to what they would pay by 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 second site (second pair of red and blue bars) the estimated new fee per boat is £746 (first bar in the pair) and the current fee per boat is £1,131 (second bar in the pair). Where the red (first) bar in a pair is higher than the blue (second) bar, the estimated fee is more than the current fee, as shown for example in the third pair.*

## Phasing in the changes

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If adopted, it is recommended that the charging method should take effect from 1<sup>st</sup> January 2012 (even if the PLA makes a decision and policy statement shortly after that date).

Application of the recommended charging method would clearly affect 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.

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 recommended 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 also says that if an increase is significant then phasing 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 licences fall into the groups detailed below. To simplify the explanation, the date of 1<sup>st</sup> January 2012 has been assumed to be the implementation date of the formula, but this is for illustrative purposes and has yet to be confirmed.

**1. A licence with a decrease in the consideration but the review date is not yet due**

In theory, the estimated 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 1<sup>st</sup> January 2012.

**2. A licence with a decrease in the consideration and the review date has passed**

In this case, the estimated charge would apply from when the 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 estimated lower amount.

**3. A licence with an increase in the consideration but the review date is not yet due**

The considerations for many of these licences have recently been reviewed and another review is not due until 2012 or 2013. The new amount would take effect from the 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 from when they fall due.

**4. A licence with an increase in the consideration and the review date has passed**

The PLA have confirmed that the earliest they will backdate overdue assessments to is 1<sup>st</sup> January 2009, which is a very reasonable concession given that some reviews were due as far back as 2005, and for some of these, the consideration was set in the 1990s. This group of licensees fall into two groups:

**a) The next review date was due between November 2009 and July 2011**

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) The next review date was due between 2005 and 2009**

Within this group, the last fee assessment was between 1994 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.

The revised fee should be backdated to the review date, but the PLA has made a concession to date limit the increase to not earlier than 1<sup>st</sup> January 2009. Therefore it could be expected that the full amount would become payable 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 1<sup>st</sup> 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 values in late 2011, which could take effect from 1<sup>st</sup> January 2012. The amount estimated 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 fee as at 1<sup>st</sup> January 2012. Adoption of the 1<sup>st</sup> January 2012 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. Furthermore, 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 1<sup>st</sup> January 2012 using the formula.

Two years' phasing:

Jan 2009 – Dec 2009	old fee plus one third of the difference between the old and new 1 <sup>st</sup> January 2012 fee
Jan 2010 – Dec 2010	old fee plus two thirds of the difference between the old and new 1 <sup>st</sup> January 2012 fee

From January 2011, the rate using the formula is payable in full for that year.

Three years' phasing:

Jan 2009 – Dec 2009	old fee plus 25% of the difference between the old and new 1 <sup>st</sup> January 2012 fee
Jan 2010 – Dec 2010	old fee plus 50% of the difference between the old and new 1 <sup>st</sup> January 2012 fee
Jan 2011 – Dec 2011	old fee plus 75% of the difference between the old and new 1 <sup>st</sup> January 2012 fee

From January 2012, the rate using the formula is 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' on page 48.

## Appendix I The London-wide notional gross mooring fee derived from the 'basket' of 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 £31 and BW £33 ex VAT	Amounts to use for the notional fee	Comments
<b>Tidal Thames</b>				
Newman's / Swan Island Harbour, nr Twickenham	£340		£340	Rate shown includes mooring fee £310 plus service charge £30.
Dove Pier, Chiswick	£316	-	£316	Rate shown includes mooring fee £291 plus service charge £25.
<b>Marinas in docks connecting to the tidal Thames</b>				
South Dock Marina	£284	-	£284	
Chiswick Quay Marina, Chiswick	£324	-	£324	
BWML Limehouse Marina Grade 1 moorings	£303	-	£303	BWML have planning consent for residential moorings and will be re-pricing Grade 1.
BWML Poplar Dock Marina Grade 1 moorings	£311	-	£311	BWML have planning consent for residential moorings and will be re-pricing Grade 1.
<b>Non-tidal Thames</b>				
Thames Ditton Marina	£340	£371	£371	
Harts, Surbiton	£441	£472	£472	£7,500 p.a. Berths are 57 foot max. Equates to 17 metre length.
<b>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)</b>				
Ice Wharf BW, King's Cross	£373	£406	£406	narrowboats only
BWML Packet Boat Marina, nr Uxbridge	£298	£331	£331	
Sturts Lock BW, Hoxton/ Hackney	£295	£328	£328	
Fife Terrace BW, nr King's Cross	£255	£288	£288	
Blomfield Road BW, Little Venice	£366	£399	£399	
Kensal Green BW, Ladbroke Grove	£252	£285	£285	
Cumberland Basin BW, Regent's Park	£287	£320	£320	
Engineers' Wharf BW, nr Northolt	£253	£286	£286	narrowboats only
Brentford Island BW, Brentford	£257	£290	£290	
Abbot's Wharf BW, nr Limehouse	£223	£256	£256	narrowboats only
Andersen's Wharf BW, nr Limehouse	£248	£281	£281	
			<b>Notional mooring fee</b>	<b>£326</b>

EA licence figures effective 1st January 2012  
 BW licence figure effective until 31 March 2012

## Appendix II

## Location weightings derived from London Property Watch

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
<b>TW1</b>	Twickenham & Richmond	£289,000	(11)	1	£392,000	(29)	1	£570,000	(10)	1	£1,578,000	(28)	1
<b>TW7</b>	Isleworth	£307,000	(5)	1.06	£281,000	(18)	0.72	£355,000	(20)	0.62	£723,000	(19)	0.46
<b>TW8</b>	Brentford and Kew	£236,000	(14)	0.82	£326,000	(39)	0.83	£413,000	(17)	0.72	£542,000	(5)	0.34
<b>W4</b>	Chiswick	£315,000	(27)	1.09	£415,000	(56)	1.06	£3,214,000	(20)	5.64	£1,698,000	(55)	1.08
<b>W6</b>	Hammersmith	£283,000	(39)	0.98	£446,000	(42)	1.14	£603,000	(23)	1.06	£1,771,000	(21)	1.12
<b>SW18</b>	Wandsworth	£257,000	(28)	0.89	£408,000	(53)	1.04	£783,000	(27)	1.37	£1,375,000	(45)	0.87
<b>SW11</b>	Battersea	£302,000	(57)	1.04	£466,000	(128)	1.19	£692,000	(56)	1.21	£1,335,000	(48)	0.85
<b>SW10</b>	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
<b>SW8</b>	South Lambeth	£285,000	(21)	0.99	£446,000	(57)	1.14	£484,000	(14)	0.85	£750,000	(9)	0.48
<b>E1W</b>	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 gross notional mooring fee.  
Note that the weightings derived have been rounded to 2 decimal places for simplicity.

### Appendix III      Comparison of using linear metre and boat area as the basis for the charge

Charging by boat area (square metre) was examined but, compared to the recommended approach using a linear metre rate, the result was disadvantageous to boats above the average width of 3.7m and provided more of a discount than 33% to narrowboats, as illustrated below.

Using the width data available to us for 220 houseboats on the Thames at licensed sites, 3.7m is the average (modal) width.

To calculate the square metre rate:

If £326 is the linear metre rate for a boat with the average beam of 3.7m, this equates to a square metre rate of £88.11 i.e. £326 divided by 3.7.

Boat A    12.2m long x 5m wide = 61 square metres		
Notional mooring fee with linear metre rate	Notional mooring fee using square metre rate	difference
£3,977	£5,375	+ £1,398

Boat B - narrowboat    14m long x 2.13m wide = 29.82 square metres		
Notional mooring fee with linear metre rate	Notional mooring fee using square metre rate	difference
£4,564 less 33% = £3,058	£2,627	- £431

Boat C    25m long x 4.8m wide = 120 square metres		
Notional mooring fee with linear metre rate	Notional mooring fee using square metre rate	difference
£8,150	£10,573	+ £2,423



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Riverhomes Estate Agents  
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South Dock Marina  
Thames Ditton Marina  
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