

The Promotion and Marketing of the Broads
Report by Chief Executive and Solicitor

Summary: This report provides an update on the funding of the new promotion and marketing post established from 1 July 2013. While there is general support for the Authority continuing to have a role in promoting and marketing the Broads in partnership with the Broads Tourism, the Royal Yachting Association takes a different view from the Authority's solicitor as to whether this activity can be in part funded from navigation expenditure. The report also provides an update on recent discussions with the Hire Boat industry and visits to boatyards.

Recommendations:

- (i) That members' views are sought on whether the Authority should:
 - (a) fund this year's promotion and marketing activity, outside the STEP programme, amounting to £45,000, entirely from National Park Grant, adjusting the budget accordingly and await the outcome of the Comprehensive Spending Review before determining the way forward for 2014/15;
 - Or
 - (b) fund the activity on the basis of 70% National Park Grant (£31,500) and 30% Navigation Expenditure (£13,500) with a further report going back to the Navigation Committee explaining the rationale for the decision.
- (ii) That the Authority notes the positive outcomes from the recent meeting with Hoseasons and the feedback from the recent Member visits to local boatyards.
- (iii) That the Authority notes that the Chairs of the Authority and Navigation Committee, the Chief Executive and Collector of Tolls will follow up the issues raised during those visits with the Broads Hire Boat Federation.
- (iv) That the Authority welcomes the recent publication of a Green Traveller Guide for the Broads.
- (v) That the Authority supports the member suggestion of a sample survey of toll payers to gain a better insight of the private boat owners who use the Broads and their opinions.

1 Background

1.1 At its meeting on 21 September 2012 the Authority resolved:

- (i) *that the Authority continues its direct role in promoting tourism in the Broads working in partnership with the business grouping Broads Tourism as described in the report;*
- (ii) *that the Authority establishes a new post located within the Communications Team to focus on the promotion and marketing of the Broads and to work in close cooperation with Broads Tourism and other relevant organisations;*
- (iii) *that further consideration be given to the level of project funding to be allocated in future years in close cooperation with Broads Tourism and other funding bodies and organisations including Norfolk and Suffolk County Councils in line with the Broads Sustainable Tourism Strategy and the Broads Plan; and*
- (iv) *that the Navigation Committee be further consulted on the funding arrangements involving navigation expenditure for the new post in the Communications Team.*

1.2 The further consultation with the Navigation Committee took place on the 11 October 2012 and the minutes for that meeting record that:

Members therefore questioned the Authority's Solicitor on whether he believed that this was in fact a legal proposal. The Solicitor commented that he was very clear in his mind that the expenditure was capable of being Navigation Expenditure and that the Authority does have the power to use Navigation Expenditure to promote and market the Broads.

It was suggested by officers that further discussions could take place between the Royal Yachting Association (RYA), British Marine Federation (BMF) and Norfolk and Suffolk Boating Association (NSBA) to try and reach agreement on the legal position.

Members were asked to vote on whether, in principle, they supported the use of Navigation Expenditure to part fund a new post in the Communications Team to work with Broads Tourism on the marketing and promotion of the Broads, subject to the Authority having the power to do so, and following further discussion with the RYA, BMF and NSBA to see if agreement could be reached on the legal position.

Eight Members supported and three disagreed with the proposal.

A further report on the subject would be brought back to the Committee before any funding of the new post from Navigation Expenditure was implemented.

- 1.3 It has not proved possible to arrange a meeting with the RYA on this matter. A response was received from the solicitor to the RYA on the 31 May, too late for it to be included in the agenda for the Navigation Committee, stating that:

“Nothing in the Authority’s solicitor’s opinion appears to us to provide a persuasive basis for revising our view of the legal position - our respective interpretations of the position are simply at odds with each other.

In these circumstances, there is unlikely to be anything to be gained by holding a meeting or teleconference of the sort you propose unless, when you mention seeing if a resolution to the problem can be found, you have in mind to propose some revision or compromise of the Authority's position.” (Extract)

- 1.4 Similarly the Chairman of the Norfolk and Suffolk Boating Association has written:

“The NSBA’s position remains unchanged in respect of the use of navigation expenditure to contribute to the costs of the tourism officer post. We were not persuaded by Chris Brown’s written and oral advice to the Navigation Committee last October.” (Extract dated 25 June)

If it is not possible to come to an accommodation on this matter then the Authority needs to take a view on how these costs should be funded.

2 The Authority’s Role in Promotion and Marketing

- 2.1 Tourism is worth over £460 million to the local economy and the Broads Authority has a national reputation for its work on sustainable tourism. It was awarded Beacon Council status in 2003-4 and more recently the Broads has been identified as one of Visit England’s five destination pathfinders (Bath, Peak District and Derbyshire, Broads and Manchester).

- 2.2 In this work the Authority has worked closely with the local businesses through the vehicle of Broads Tourism. A copy of the output from the latest collaboration with the private sector, the green traveller guide, is circulated with this agenda and can be found at the following web address.

<http://www.greentraveller.co.uk/blog/greentraveller-guide-broads>

- 2.3 The key issue going forward is the need for coordinated and effective marketing and promotion activity for the Broads, led by the private sector but supported by the Authority. The new post has the following key roles which have been incorporated in the job description agreed with Barbara Greasley, Chair of Broads Tourism:

- *Raising awareness of the Broads as a special destination and generate more visits and spending, particularly in the spring and autumn;*
- *Continuing to drive up the quality of the visitor experience, providing a consistent standard of facilities, services and welcome that meets the needs of all;*

- *Providing visitors with a wide range of opportunities to experience, enjoy and understand the special natural environment and heritage of the Broads;*
- *Promoting the respect of the sensitive environment of the Broads, minimise negative impacts on natural resources, landscapes and biodiversity and increase support for conservation;*
- *Providing the right conditions for successful tourism businesses and investments which contribute to the wellbeing of local communities.*

3 Legal Advice

3.1 A copy of the legal advice provided by NPLaw last October is appended (Appendix 1).

3.2 The RYA's view is as follows (e-mail Feb 2013):

1. The BA/RYA/BMF agreement was quite clear that neither the format of, nor the apportionments in, the financial report may be altered without the agreement of the Navigation Committee. The proposal to seek funding for a tourism officer and other communications expenditure is clearly a matter of apportionment. If the Navigation Committee is to be asked to agree to an apportionment allowing for navigation income to be spent on a tourism officer post and other communications expenditure, the Navigation Committee must be given full details of the proposal sufficiently far in advance of the meeting to enable it to take advice on the implications.

Comment: The Navigation Committee was given details of the proposal at its meeting on 11 October and questioned the Authority's solicitor on his legal advice. A majority of the Committee "*supported the use of Navigation Expenditure to part fund a new post in the Communications Team to work with Broads Tourism on the marketing and promotion of the Broads, subject to the Authority having the power to do so, and following further discussion with the RYA, BMF and NSBA to see if agreement could be reached on the legal position.*"

2. Notwithstanding the reported advice of the Authority's solicitor, navigation income can only be spent on navigation expenditure and we remain of the view that such expenditure cannot be said to include the appointment of, or expense of having, a tourism officer. I acknowledge that the Authority takes the view that some contribution to the expense of promoting tourism is capable of being treated as "navigation expenditure" on the basis that it is incurred pursuant to the Authority's functions to "maintain the navigation area for the purposes of navigation ... and take such steps to improve and develop it" (per section 10 of the 1988 Act) but I would point out that the reference there is to the navigation area itself, not its exploitation for tourism, hence our view that the financing of tourism and communications expenditure out of navigation income appears to be invalid in itself. The fact that marine businesses might benefit from the work of a tourism officer is, in this regard, immaterial.

Comment: The Authority's Solicitor takes a different view as set out in the Appendix.

3. The BA/RYA/BMF agreement does not facilitate a change in apportionment which would otherwise be unlawful. As was noted by the Authority in relation to this provision at the time, the provision was concerned with internal processes only. Any implication or suggestion that this provision was included to empower and facilitate navigation income being spent on something other than maintaining, improving and developing the navigation area for the purposes of navigation would be misplaced.

Comment: The Authority's Solicitor takes the view that the expenditure would be lawful.

4. We recognise that the Government has reduced the funding that it provides to the Authority in support of its non-navigation functions and that this has had an overall adverse impact on the resources available to the Authority but we do not accept that this, of itself, justifies the repeated attempts made by the Authority to divert navigation income towards non-navigation expenditure.

Comment: Expenditure is apportioned on a reasonable basis taking into account the staff time and resources used.

4 The Hire Boat Industry

- 4.1 Six of the local boatyards were visited by Members on 30 April and 2 May. They were of very different sizes from fleets of just 12 cruisers to over 100. A debrief for the meetings was held on 18 June and a wide range of issues were discussed. The combination of difficult economic conditions and the adverse weather means that bookings are down, 15% being quoted, and this is reflected in visits to the Authority's yacht stations which are experiencing a similar reduction in boat visits.
- 4.2 Two specific issues and actions were identified: Firstly, the change in the payment of tolls, four payments rather than two, has evidently helped yards but a lesson from this year is that future arrangements need to be agreed well in advance. It is therefore suggested that the Chairman, Chief Executive and the Collector of Tolls meet with the Broads Hire Boat Federation to discuss the process for next season.
- 4.3 Secondly it was suggested by a Member that a sample survey of the private boat owners, using some of the questions from previous and incorporating new ones would be helpful in understanding more about private boat owners and their opinions. It is proposed that this be carried out over the summer period.

5 Meeting with Hoseasons

- 5.1 A very productive meeting was recently held with the new senior management of Hoseasons. The outcome from which was an agreement to work together in the future on safety matters, promotion (and a presence in the Hoseasons tent at the Norfolk Show was offered and accepted) and quality.

Background papers: None

Authors: John Packman and Victoria McNeill

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Broads Plan Objectives: None

Appendices: APPENDIX 1 - legal advice provided by NPLaw

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Dear John

Re: New Post in the Communications Team

I am writing to set out the advice I gave to the Navigation Committee on the 11th.

The Authority has no express powers in the 1988 or 2009 Acts to appoint a communications officer to work with Broads Tourism but the Authority like other local authorities has implied powers to do anything which is incidental or conducive to its express powers. The appointment therefore must be incidental or conducive to some or all of the Authority's powers and for the purposes of keeping accounts pursuant to section 17 of the 1988 Act it has to be decided which they are.

For the purposes of section 17 navigation expenditure has a special definition and it includes under (a) the functions under part II of the 1988 Act.

The Authority has a duty under section 10 to maintain, improve and develop the navigation area.

The expenditure on this post is referable to this function on the following assumptions:-

1. It is reasonably likely that the new post will increase tourism.
2. It is reasonably likely that the increase in tourism will increase or at least maintain the income to the navigation account.

3. That income will help to improve, maintain or develop the navigation area.

In addition or in the alternative, the special definition in section 17 (8) also includes as navigation expenditure, expenditure for the purpose of facilitating or promoting the public right of navigation. The expenditure on this post will be within that definition on the following assumptions:-

1. The new post is wholly or mainly connected with conserving cultural heritage.
2. Part of the expenditure on the new post is directed to facilitating or promoting the right of navigation.

The issue here is “wholly or mainly” connected with cultural heritage. I note your involvement with the Bill and I think it a reasonable conclusion that the *cultural* heritage of the Broads, as opposed to its natural beauty or wildlife, is mainly connected with the right of navigation, commercial and recreational.

RYA Advice:

1. Any gap in the advice or process is now corrected.
2. The only reasoned point here is the interpretation of section 10. My view above is that there is a link between revenue for tourism e.g. tolls and navigation income and therefore expenditure on the navigation area.
3. If the apportionment is lawful, which we say it is, the agreement should facilitate the apportionment, see below.

Richard Card:

Issue 1.

The first part of this note alights on the meaning of “promoting”. It says that the expenditure has to be for physical works only, but this is too restrictive an interpretation, preserving cultural heritage may involve more than physical works and promoting encompasses more than physical works.

The agreement and judicial review are then mentioned, see below.

Issue 2.

The Navigation Committee may be a consultee for such a change but it does not have a veto by withholding its agreement. The Committee has been consulted and wishes to make the apportionment, if it can be done.

Apportionment - see below.

The Apportionment:

This is a central service function and the Authority has decided that a fair and equitable way to apportion such expenses is one-third to the navigation account. The Authority should take that general policy into account in deciding the apportionment in relation to these expenses but give due consideration as to whether a different apportionment is more appropriate.

The Agreement:

You have noted that the Agreement defined tourism expenditure as not navigation expenditure. Ultimately the Authority has to make its own decision in preparing the accounts for audit under section 17 by identifying what part of the expenditure on the new post is referable to navigation expenditure. The Agreement must be taken into account and if the Authority's decision is different from the Agreement the Authority must have clear and defensible reasons for that difference, but it would not be lawful for the Authority to continue to follow the terms of the Agreement regardless of its duty to keep proper accounts.

Judicial Review:

Provided the expenditure is at least capable of being navigation expenditure, which I consider it clearly is, then provided we have come to a reasonable judgement on the nature of the expenditure by properly addressing the assumptions set out above, the Courts will not interfere with that judgement, even if there are other reasonable opinions to the contrary.

Yours sincerely

Chris Brown
For the Solicitor