

ANNUAL MEETING 2009

Note: This was a presentation with slides, not a scripted speech

Speaker: Mike Hudson, Compass Partnership

Thank you very much indeed. Thank you for inviting us to come and talk to you today. I would like to begin just by introducing the three firms who are involved in this exercise so you know our backgrounds and where we came from. I run Compass Partnership which is a small firm of management consultants that works with national charities, such as Groundwork Trust, the Woodland Trust, Oxfam, the Charities Aid Foundation, we work with regulators such as the Charity Commission and the Housing Corporation and we work with funders, such as the Cabinet Office and the Home Office. BWB our legal colleagues, are the largest group of lawyers in the UK, working mainly with charities and social enterprises and they have a total of 75 lawyers on their staff. They are not BW's in-house lawyer team. There is a little potential confusion here and I will always refer to BW as BW, British Waterways and my legal colleagues as BWB, just so we are completely clear about that.

The third firm we have had working on this is some colleagues from an outfit called Think Consulting that specialise in marketing and branding and they have worked with people such as the Natural History Museum, the National Trust and the Royal Botanical Gardens. So that just gives you a sense of 'the team' who have been working on this and just to show you that management consultants do have lives outside their work, here is me on the Llangollen Canal with my family and in fact there they are on the Llangollen Canal which we had great fun on and I could show you a lot more slides of our family holidays but I am not sure the Chairman would, we did also do the Caledonian Canal from end to end, one very chilly April - those of you from Scotland will know what the Caledonian is like in April.

Moving swiftly on to the serious beef, I see the Chairman is looking at me quite closely. Our brief was to bring our expertise in governance and management and strategy of third sector organisations, our knowledge of the law relating to the third sector and our experience in fundraising, to consider the options for moving to the third sector. This is work in progress - we were engaged to advance the debate, not to make conclusions or recommendations. These are our views, not BW's views and today you will have a number of opportunities and, hopefully over lunch particularly, to hear your views and will hear more afterwards, and I would encourage you to send us emails and we will give you an address at the end if you have views on anything that we say, we would welcome those. We really want to hear from everybody and what you have to say, before we finalise our report in November.

So that was our brief. What have we done to date - we have briefed on the very complex network of organisations and many of you are here that are involved in British Waterways. In passing, we did a lot of background reading and we happened upon a report written by the IWA in 1960 which was a complete fluke as the advantage of having the internet these days when you can just type in key words and up came the 'Ackerman Report' which those of you with a sense of history, will know suggested that there should be established a water concertainty that should be established as a non-profit company with charitable status, so we recognise this is not a new proposal, its one that has been around for a while and may be tucked away. So far, what we have done we have written a pack of papers on the whole issue and we have held a workshop with the Board. We are looking forward to your thoughts today and will also be seeking further thoughts after today, before we finalise our report to BW.

Most of you think of the charity sector, or the third sector as being charities. In fact it consists of much more than charities. The third sector consists of a huge constellation of organisations, over a 170,000 charities, some 4,500 co-operatives, nearly 2,000 Housing Associations whose interestingly total assets are more than 10x BW's assets. The third sector also includes social enterprises, some of which are included in these figures above

and examples of those would be the Eden Project which some of you may have visited, Divine Chocolate and Jamie Oliver's restaurant, 15. The third sector also includes now some 3,000 community interest companies, a legal form for social enterprises that plough their profits back into their organisations. So you begin to see from this, how diverse the third sector is today.

We are not necessarily going to suggest that BW should become a charity, but if it were to become a charity, it would be the 13th largest in Britain, so by no way the biggest. Cancer Research, the National Trust, Oxfam and the Red Cross would all be largest. Obviously BW is an asset based organisation but even there, it would be the 6th largest by assets, somewhat smaller than the National Trust, the British Museum or the RNLI.

So that just positions what the third sector and where BW might fit into it. As some of you will know, the boundary between the third sector and the public sector is quite fuzzy. At one end, there are organisations that are clearly in the public sector, such as the Environment Agency. At the other end, there are pure charities such as the Woodland Trust. In between, there are organisations that are legally charities, but receive a very significant proportion of their income from the Government, such as the British Library. There are also public sector organisations that you can join and that you can give donations to, such as English Heritage which, by the by, has nearly £800,000 worth of charitable income a year and has almost 700,000 members, still as a public organisation. There are many other organisations that sit on this spectrum.

To further complicate matters, there are some pure charities that also have statutory responsibilities such as the RSPCA and the NSPCC. So the proposal and, also by the way, there are public organisations that have very few powers, except to advise Government - IWAC is one that clearly you will know as an example of an organisation, again that sort of sits slightly on the boundary, but towards the public sector end.

So the proposal is that BW might migrate towards the right hand end of the spectrum and become more of a third sector organisation. At some point, it could adopt a third sector legal structure. Other organisations have done this in the past, Historic Royal Palaces is an example, you may know it - the organisation that runs the Tower of London, Hampton Court and other Palaces, though the Palaces themselves are still owned by the Crown, but it is now formally a charity. In our view, it might take up to 10 years to create an organisation that is culturally, legally and financially a third sector body and indeed it might not even be called British Waterways. However, we think the move would fit with a long term trend of movement from the public sector to the third sector.

20 years ago, the third sector used to be viewed really as an agent to the State. Today, there are much greater management of state functions by third sector organisations. Network Rail is a non-profit company. Sports organisations such as Greenwich Leisure have moved out of the Local Authority sector and become a much more dynamic sports and leisure organisation. Heritage organisations that used to be run by local authorities have moved out into the third sector and become more dynamic. Children's services even are commissioned by the State, but these days are increasingly delivered by charities.

There is also an increase in assets owned by the third sector. Those of you who are involved in Housing Associations will know that over the last 20 years, some £4bn worth of public housing has moved from the State to become Housing Associations and that has brought new vigour and energy to that sector. Many community buildings are now being moved to the third sector as the Government is encouraging re-vitalising those community buildings that have perhaps fallen into disrepute and less use.

The three main political parties are all committed to a greater role for the third sector and I will give you two quotations here - David Cameron said earlier this year "that the

Conservatives will invite social enterprises, private companies and community organisations to help run our private services, not in a limited way but with passion and enthusiasm because we really believe in it."

Angela Smith, the Labour Minister for the third sector, recently said "third sector organisations bring innovation, commitment and quality. The benefits of the third sector being involved in service delivery are quite clear." The Lib Dems also have a statement on their web site in a similar sort of vein.

As well as political support, there is also support from the Scottish and Welsh Governments and I won't go into the detail on that but they have both made statements very much in support of moves to the third sector.

So whilst there are many arguments, one of things we have tried to do is to boil them down to their essence and we think there are three underlying arguments that can be made to support this move. The first is that it would create a clear vision for the future of the waterways; the second it would enhance the stewardship of the waterways, where they are overseen and the third, it would provide more secure economic foundations and I just want to say a few words about each of those.

First, a clear vision for the future. Third sector organisations, as many of you know who are involved in them, are driven by passion and by visions. Water Aid has a vision of a world where everyone has safe access to water and sanitation. The RNIB has a vision of a world in which blind and partially sighted people enjoy the same rights, freedoms and responsibilities and quality of life as people who are fully sighted. Organisations work best when they are motivated by a clear vision and there is undoubtedly a job to be done to sustain the waterways and to maximise the public benefit that they create. Moving to the third sector, in our view, could focus BW more sharply on the job of improving the heritage of

Britain's waterways, working even more closely with the many other third sector stakeholders who can contribute to that shared aim and shared vision. We have also heard as we have been around and talking to people in the sector, that moving to the third sector would enable a more genuine engagement with local partners and public sector partners as well, on an equal footing without being viewed as some say, as part of the State that ultimately has to respond to the pressures of Central Government. So that is the first leg of the case.

The second is that it would enhance the stewardship of the waterways. Third sector Government structures allow a much more diverse governance arrangement than a possible end of public sector. Many third sector organisations allow people to make a valued contribution to governance, without necessarily giving control to any one group. Some have regional groups, some have specialist advisory groups. The National Trust for example has advisory groups that report into its Board as an integral part of its governance on land use and on nature conservation. These groups advise the Board and take some responsibility for guiding policy and strategy. The Red Cross has branches in every city and town of the UK and their governance is organised into territories that are represented on the Board. Victim Support has a different kind of structure - it has an assembly with two members from each region of the country to make front line experience available to the Board and advise them on policy issues. I know although sometimes people will criticise the third sector for their complexity of their governance structures. It does allow engagement with a much wider range of stakeholders and more people to be involved in achieving the mission.

So the third element of the case, sorry the third element of enhanced stewardship, jumping ahead of myself here, it was to allow greater contribution from volunteers. Now we know that the Waterways Trust, the IWA, the Waterways Recovery Group, the many canal societies, boat restorers, museums and many of you in this room, are involved in organisations that depend heavily on volunteers. They do a great job and it should be respected. But as you can see from the examples we have got here, some other charities

seem to attract larger number of volunteers and use them for a very wide range of purposes. So there is a view that a move to the third sector and the development of a new volunteer strategy would allow BW to be more attractive to potential volunteers and expand the sorts of tasks they could undertake.

The third and final element of the foundations are the case for moving to the sector is foundations for economic stability. We have already mentioned, Tony has, the £30m funding gap in the KPMG report. BW has made some very preliminary estimates of the financial implications of moving to the third sector. These include income from fund raising, charitable income, greater contributions from Local Authorities and other partners, potential lower tax payments and a number of other potential income streams as mentioned on the slide and there is a thought that potentially, in about 10 years which is a long time ahead, that this could amount to something in the region of an additional £10m per annum if BW was in a new structure. A very preliminary estimate but a sense that there is the potential there, not enough to fill the gap, don't think anyone would suggest that, but to improve the situation and to provide foundations for greater economic stability.

As an example, we have got here, we have tried to use as similar organisations as possible, most large charities, the very biggest ones, will raise £1-2m a year from Charitable Trusts, doing a range of difficult activities related to their core business. They also raise money from their members and appeals and these are the figures you can see from above, from the Woodland Trust, Wildlife Trust and other organisations. Significant sums of money. We are not saying that BW could necessarily raise as much as some of these, you have to have a compelling cause and to make it a compelling cause, and probably the most interesting parallel in a way is the Woodland Trust which, 20 years ago, probably wasn't a compelling cause. We had our woodlands, we sometimes visit them, the Woodlands Trust has done an absolutely tremendous job in making them into a much more compelling cause.

So there we go - those are the three central arguments that I think we should have in our minds when we are assessing this proposition and I now want to hand over briefly to my colleague Stephen to say a few words about the legal possibilities and implications.

Speaker: Stephen Lloyd - Bates, Wells and Braithwaite

Thank you Mike. Yes, as Mike has explained already, I mean what we are looking at here is very much a series of possible proposals. If you were to move at some point to a structure outside your current structure, then that legal form would need to have these characteristics - first of all, you must have limited liability which you have got at the moment by virtue of your statute. You would need to make it clear that this organisation was set up to safeguard the mission of providing public benefit and I will explain on the next slide how that can be done. To pick up on what Mike was saying, there is a real need to ensure that the governance structures would enable there to be appropriate public accountability and transparency which third sector organisations, at their best, are really good at. You need a structure that could bring about an involvement of stakeholders in the governance of the structure and again, Mike has referred already to the Red Cross. I was involved indeed in the whole re-organisation of the Red Cross to ensure a governance structure that was both centrally driven and co-ordinated, but also which had local buy-in and local involvement to get the best of both a central strategy and local democracy and indeed one of my colleagues has been working on the structure for Victim Support that Mike has just been referring to as well.

You need an up to date legislative framework, for example I would advocate using a company, not an Industrial and Providence Society, because company law is kept up to date in a way that Industrial and Providence Society law is not. The last time that law was changed was when Harold Wilson was Prime Minister. You need a structure that allows you to borrow significant amounts of money, not because you want to bet the farm, but because you just need to be able to borrow in a prudential way which the current structures limit you.

The options include an evolutionary model which certainly I would advocate, which would begin with working within the current structure, one of the ways in which you could work within the current structure in an evolutionary way would potentially be to establish a new operating company which would operate beneath the statutory Board that currently operates within the statutory framework that you have. That operating company could be a company limited by guarantee, like Network Rail or indeed Welsh Water. It could be a community interest company known as a CIC, a new form of organisation that has been around for the last five years. In either case, they would be wholly owned by British Waterways. It could indeed be a charity, as Mike referred to the earlier report. It could be a company limited by guarantee, that is also a charity. Or alternatively, you might have a charitable subsidiary of the operating company. These are all possibilities that need to be looked through and worked out what is the best in the long term interests of BW. You might, as a final step, having been through that evolutionary phase, go to a completely new structure outside the State sector, in other words you would then have an entirely new holding company as a company limited by guarantee or a community interest company or a charity, again choices to be determined. At that point, by primary legislation, you would need to transfer the assets and liabilities of the current BW to the new holding company. If the new holding company were not a charity, you would have a charitable subsidiary to work along side it.

Mike has referred as well to the whole way in which third sector organisations have more participative governance structures than tends to happen with the "top down" organisation owned by the State. If we were to move to evolutionary adaptation of the BW structure, then at the moment you would have the existing Board appointing the operating company Board. You could move beyond that - you could have a nominations committee which would look to expand the number of people on the Board to reflect different skills as needed. If you moved to a wider constitutional change with a new organisation, you might have a system such as Network Rail and Welsh Water have, they are companies limited by guarantee, they have a two tier power structure just like any company, but not having shareholders, they do have members and to ensure the members can hold the Board to account, the membership is a

group of about 110 people in both cases, deliberately drawn from a wide variety of backgrounds, so that they can hold the Board to account and that might be something that you might look at in your own structures going forward.

I have mentioned already there are ways within the current structure, I believe, that you could use Section 14 of the Transport Act 1962 to develop an operating company that could act in a way like a third sector organisation within the existing legislative umbrella. I am not a great expert I hasten to add on the whole statutory powers of BW, but Nigel Johnson, who is obviously BW's in-house lawyer, has far more knowledge about that than I. Any further reform within the establishment of a third sector organisation outside the current structure would, I believe, require primary legislation, which as you know, is very difficult to get done and can take a year.

On that note, I am going to stop and hand back to Mike who has probably got more interesting things to talk about than legal structures.

Speaker: Mike Hudson, Compass Partnership

As well as hearing the case for this move, we have also heard some concerns expressed about it and I wanted to share with you a quick summary of those concerns, so we can be seen to be even-handed. The first concern is that as a public body, the Government is funder of last resort potentially and if you left the sector, then the Government might no longer be a funder of last resort. I have heard arguments both that that would be the case and also that actually in reality, although in theory the Government is a funder of Last Resort, in practice, that doesn't seem to have happened very often. The case of the breach of the Mon & Brec being cited as an example.

We have also heard that another concern is that it would be hard of the Government to hold BW to account if it didn't actually own BW, though clearly it would still be able to hold BW to

account for its public funding for any contract income that it received, but we have heard that argument. We have heard an argument that the Government and BW might not be able to agree on a contract. They might not agree on the terms or on the amount of it. They might agree now but maybe in the future, can't come to an agreement and that's a concern and we need to think about that concern, how it would be managed.

We have heard that raising this whole issue now, particularly at the moment, might give the Government an opportunity to reduce BW's funding - come along and say we are thinking of changing our status, it opens up a whole debate and they might say well, this is an opportunity to reduce our funding to BW, we have also heard that it might be an opportunity for the Government to take some of BW's property portfolio away, another concern that would need to be thought about.

Finally, the big concerns we have heard, is a recognition that the situation in Scotland is slightly different from the situation in the UK and there is a kind of a settlement there between the Government and BW which has worked well, it has led to good funding and has kind of culturally a greater sympathy towards public sector ownership and although the Scottish Government is encouraging third sector organisations, I think that is probably perhaps not so much the case with BW.

So clearly there are concerns and these have to be balanced and our report will be presenting both the case for and also some of the concerns that have been raised as we have been doing our work.

So let me summarise the big picture as we see it. A 109 years ago, the National Trust was founded to look after places of historic interest and natural beauty, permanently for the benefit of the nation and to become a cause that we all now readily support. 37 years ago, the Woodland Trust was established when there was little support for trees and we

recognise it and we support it and we volunteer for it and have a large membership. Clearly, it would require all of BW's stakeholders to be willing to rise to the challenge of supporting this new organisation. This is what makes third sector organisations work - people champion them, believe in them, believe in the cause and therefore achieve and are more likely to achieve their result.

Clearly as you have seen from today, there is much more detail to be worked out. The risks that will have to be managed, but we believe that making this move could potentially create the energy, the vision and the enthusiasm for the future of the waterways which might achieve Tony's objective of securing them into perpetuity. We think the change is achievable and we would like to hear your views.

Thank you.