

Salcombe Harbour Board, 30th November 2004**TRUSTS****Report of the Salcombe Harbour Master****Statutory Powers: The Pier and Harbour Order (Salcombe) Confirmation Act 1954****Financial implications:** None**Purpose**

1. This report asks the Board to provide policy guidance with regard to those mooring contracts allocated to Trusts and how to apply the waiting list policy with regard to future applications by Trusts. The contents of this report are linked to CP 6 – ‘the improvement of core services in cost effective way’.

Recommendation

That the Board RESOLVES:-

- (i) to agree that existing mooring and berthing contracts with Trusts must be asked to provide a named nominee (who is a Council tax payer);
- (ii) that any future applications accepted by a Trust must specify a nominee (who is a Council Tax payer) and will thereafter be treated as any other named contract holder as per the Salcombe Harbour Board mooring and waiting list policy;
- (iii) amend the Salcombe Harbour Policy Document accordingly.

The Issues

2. A small number of moorings or pontoon berths are allocated to Trusts, some dating back many, many years. The Harbour Office has recently received enquiries from Trusts who would like to be considered on the Harbour Board’s waiting lists for Harbour facilities. Providing that the person applying on behalf of the Trust is a South Hams ratepayer, there is no reason why the Harbour Office should not accept the application in his or her name but on their demise the contract will cease.
3. The current waiting list policy states that a contract is specific to a named person, or named persons as joint owners. The difficulty arising with a Trust is that it does not specify a nominee, or named person. Therefore the facility could perceivably remain with the Trust for many years regardless as to whether the original applicant uses the facility or remains living.
4. The original application may well be legitimate but on the death of the berth holder a Trust may be set up to deal with their estate. Thereafter there is an opportunity for the Trust to retain the facility that within the spirit of the present policy of the waiting list disadvantages those legitimately on it. Therefore it is suggested that the berth is

not retained by a Trust once the estate has been wound up or within a year of the death of the original berth holder.

6. The Council's Legal Services have been consulted over this matter and have no concerns with this approach.

Risk Assessment

5. It is essential that all facilities provided by the Board are allocated as per Harbour Board and Council Policy and that all existing and future customers are allocated facilities in a fair and open way. The Council must also ensure that their policies are kept current to prevent opportunities for customers to gain an advantage over others.

Human Rights

6. There are no obvious human rights issues arising from this report.

Conclusion

7. The Harbour Master recognises that this is a sensitive and complicated issue, but seeks guidance from the Board before any further applications by Trusts are accepted by the Harbour Office, a policy decision by the Harbour Board recommended for approval by the Council should be obtained.
8. The terms and conditions of a Council's berthing contract for pontoon and mooring facilities stipulate that :-
 - Para. 7 (a) This berthing contract is personal to the hirer, and cannot be transferred or assigned by the hirer to any other person.
 - (b) The hirer must not sublet, subcontract, hire out, license or lend to any other person its right to use the mooring.
7. Therefore it is felt that contracts allocated to Trusts advantage those within the Trust and disadvantage those on the waiting list by virtue of not having a nominee or named person who, if for any reason relinquished the contract, it could perceivably stay within the Trust whilst any other contracts which are allocated to a named person or joint owners, would have to be relinquished and re-allocated to those on the waiting list.

S E Tooke
Harbour Master

Salcombe Harbour Board
30th November 2004

Paula Brooks
Strategic Director (Operations)

Background Documents

Salcombe Harbour Policy Document
Terms and Conditions of a Council Berthing Contract