

National Barge Travellers Association

Consultation response: proposed changes to mooring stay times in Berkhamsted, Braunston and Marsworth.

General

The National Barge Travellers Association (NBTA) is a volunteer organisation formed in 2009 that campaigns and provides advice for itinerant boat dwellers on Britain's inland and coastal waterways. The term Barge Traveller includes anyone whose home is a boat and who does not have a permanent mooring for their boat with planning permission for residential use. The NBTA is the only national organisation in Britain dedicated to upholding and defending the rights of itinerant boat dwellers. The NBTA has members on all the major navigation authorities' waterways and beyond.

Adverse effect of the changes on Barge Travellers

To reduce the stay time on moorings that are now available for the full 14 days to 7 days or 48 hours to the extent that is proposed in this consultation will have a very significant adverse effect on boat dwellers without home moorings. They will also have an adverse effect on all boaters who need to stay for 14 days in these locations, whether or not they have a home mooring and whether or not they live aboard. The National Barge Travellers Association is opposed to any reduction in mooring time limits of less than 14 days.

The proposals will further concentrate boaters to ever decreasing areas therefore causing more issues for CRT enforcement and those boaters who wish to stay in these areas for 14 days. This will allow CRT to restrict more licences and evict more Barge Travellers from their waterways.

These proposed changes will have a detrimental effect on the boat dweller community in respect of access to medical care, schooling, employment and town services. Reducing these time limits, as seen in previous changes in other areas such as Stoke Bruerne, has had a detrimental effect on the local community, canal side business, canal traders and boaters both with and without a home mooring.

In 2013 CRT consulted on plans to reduce the mooring time limits in 22 locations in the South East. The 2013 proposals had been developed over the previous 3 years from 2010 by a hand-picked group of the boating trade, selected waterway users and canalside residents. This process was carried out through the South East User Group Forum and headed by Jeff Whyatt, Waterway Manager; continuous cruisers and boat dwellers without a home mooring were excluded from the development of these planned mooring restrictions. The restrictions and changes were designed to benefit the interests of those invited to participate, and were detrimental to the interests of continuous cruisers and boat dwellers without a home mooring. The discussions were not made public by BW or CRT. It is clear from Freedom of Information requests (see https://www.whatdotheyknow.com/request/mooring_bans_or_changes#comment-36387

and

https://www.whatdotheyknow.com/request/justification_for_the_proposed_c#incoming-365234

that these proposals were driven by the boating trade (hire boat and marina companies) and were hostile to boat dwellers without a permanent mooring. When the consultation was announced in January 2013, these plans met with massive opposition and the majority of proposed reductions in stay times were dropped.

It is obvious that CRT is attempting to sneak the same changes through again on a piecemeal basis. The NBTA does not believe that Berkhamsted, Marsworth, Braunston (and Batchworth) are the only locations where CRT has plans to reduce mooring stay times. We believe that this is the precursor to all the above 22 locations and more being subjected to reductions in mooring stay times contrary to the wishes of the majority of boaters. This is evidenced by the Destination Survey prepared by Kathryn Dodington in May 2015 and other information presented to the South East Boating Sub-group on 30 November 2015 in which the same 22 locations and others are scored for visitor attractions and income potential.

It is a matter of great regret that these same divisive, biased and unfair proposals are being recycled yet again. The question has to be asked, who would benefit from these changes? The proposals are a continuation of CRT's ongoing attack on the right to use and live on the waterways without a home mooring and are effectively a proposal to exclude boaters without home moorings from large stretches of waterway to make more room for the leisure and holiday trade. This practice is often referred to as social cleansing or social exclusion and it is not appropriate for a charity to be engaged in such an abhorrent practice.

These proposals are not reasonable. To prevent boaters from mooring for 14 days in such a large number of specific locations, in a way that is obvious that similar mooring restrictions will be rolled out across the CRT waterways, is excessive, draconian and contrary to the general public law duty to exercise statutory powers in a reasonable way (see the judgement in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] EWCA Civ 1). The waterways need more places where boaters can moor for 14 days, not fewer.

To add insult to injury, the proposed mixture of different time restrictions and non-return periods in each location is so confusing that boaters will incur extended stay charges without intending to. This is unjust and could be construed as a deliberate attempt at entrapment. The maps are not clear because they do not provide enough detail to relate what is on the map to what is on the ground. It is confusing because there are so many different time limits marked on each map. This makes it misleading. Boaters who plan where to moor using maps like these will frequently find themselves in an area with a different time limit to the one they expect to be in and will not be able to turn round. If they continue past the mooring place they had chosen, they may not find a mooring with the time limit that they need. For example, maps like this have been handed out in Oxford since at least 2007 that have not been clear enough or accurate enough to enable the boater to tell where the different mooring time limits are: according to that map, there should have been a 7 day mooring area at a particular location which actually had a 48 hour time limit on the ground.

Lawfulness of the proposed changes to mooring time limits

CRT does not have the power to set mooring restrictions of less than 14 days; to set non-return limits; to erect signs designating compulsory mooring restrictions, or to impose fines or charges for the infringement of mooring restrictions. (House of Commons Select

Committee on the British Waterways Bill, 1993-94). CRT has the power under s.43 of the 1962 Transport Act to make charges and set conditions for such services and facilities for which the original Enabling Acts (such as the 1793 Grand Junction Canal Act) had specifically granted a right to provide and charge for. BW confirmed to the House of Lords Select Committee on the British Waterways Bill in 1991 that it had no statutory powers to enforce such mooring restrictions or charges as are proposed in this consultation, and this is still the case today.

The authority of *Moore v British Waterways* [2013] EWCA Civ 73 confirms that CRT does not have the power to impose the restrictions and charges proposed in this consultation. It confirms the public right in common law to do anything that is not expressly forbidden by statute. CRT does not have the statutory power to prevent boats from exceeding the time limits on visitor mooring signs; it does not have the statutory power to prevent boats from returning within a specific period, and it does not have the statutory power to impose fines for exceeding such time limits or charges for staying longer.

In *Moore v British Waterways* [2013], CRT argued that s.43 of the 1962 Act gave it authority to impose whatever restrictions it wished. This argument did not succeed. In the case of Mr Moore, there is no other legislation that provides CRT with the power to restrict mooring. The inference is that s.43 of the 1962 Act can only be construed to ride on top of some other statutory power available to CRT at any given time. The judgement clarified that in a democratic society, a citizen's rights include a general right to do something unless it is restricted or prohibited in statute. There is nothing in the British Waterways legislation that prohibits mooring and therefore it must be assumed that there is a right to moor.

Further to this, in the 1990 Bill that became the 1995 British Waterways Act, BW sought powers to impose fines for a breach of a mooring restriction. BW also sought powers in the 1990 Bill to erect signs designating mooring restrictions. Parliament forbade BW to impose fines for violation of a mooring restriction. As a result of this, BW withdrew the wording relating to the erection of signs designating mooring restrictions. BW had previously presented evidence that stated that its signs for mooring restrictions were advisory in nature. BW also withdrew the wording relating to the designation of mooring restrictions. Therefore, signs denoting visitor mooring time limits remain advisory to this day and not compulsory. The only mooring time limit that CRT has the statutory power to enforce is the 14-day limit applying to boats without home moorings in s.17 3 c ii of the 1995 British Waterways Act.

The Commons Select Committee also rejected any "no return within" restrictions (House of Commons Select Committee on the British Waterways Bill, 1993-94). As a consequence this means that any "no return within" or "maximum days in any period" restrictions also remain advisory and not compulsory. The proposed no return within time limits are unlawful.

In addition, to set a "maximum stay in area" limit is therefore unlawful. Section 17 3 c ii of the British Waterways Act 1995 sets a limit of 14 continuous days in any one "place". An "area" is not a place; there may be several places in an area. CRT does not have the legal power to broaden the definition of "place" into "area".

The judgement in *McCarthy and Stone (Developments) Ltd v Richmond upon Thames LBC* [1989] UKHL 4 in which reference is also made to the authority given in *Attorney-General v Wilts United Dairies Limited* [1922] 38 TLR 781 (HL) further underlines the

principle that a body exercising statutory powers such as CRT may not make a charge unless there is express authorisation in statute to provide the service which is being charged for and to make the charge.

The existence of the power to create bye-laws for control of moorings granted by the 1954 British Transport Commission Act is proof that CRT does not have not the power to create the restrictions proposed in this consultation using its powers in s.43 of the 1962 Transport Act. The very existence of the bye-law making power negates the argument for the interpretation of s.43 as a “catch all” power that would enable CRT to impose these restrictions. To emphasise the point, the bye-law making power is restricted to those areas of control that Parliament allowed BW to include in bye-laws: powers to control moorings being explicitly named.

To attempt to implement these proposals for mooring restrictions without seeking Parliamentary sanction is an unconstitutional and unlawful abuse of power. In addition, for CRT to lawfully apply any penalty against failure to comply with a mooring restriction, whether this is called a charge, a fee or a fine, it must identify the regulation sanctioned by Parliament that is being breached.

Lawfulness of proposed extended stay charges

The proposed extended stay charges are neither lawful nor reasonable. Firstly, no specific authority has been granted by Parliament to CRT to impose either a charge or a penalty for a violation of the time limits on visitor moorings. Secondly, the level of the charge at £25 per day bears no relationship to any proper charge for the use of the waterways nor to the actual loss or costs associated with overstaying. It is therefore in the nature of a fine or penalty. It is unreasonable in amount because the purpose as stated in previous CRT consultation documents and reports is to deter overstaying. The consultation does not explain how the £25 per day extended stay charge has been arrived at, or what the true cost is of keeping visitor moorings available. Neither does it explain how these charges will be payable or collected from boaters who wish to pay to stay longer. The fixed daily element is inconsistent with the true cost is of keeping visitor moorings available because the costs of enforcement cannot increase in this way and cannot realistically be considered to do so. The charge is fixed at a level to make it impossible to stay for any extended period compared to the average annual mooring fee. This makes it a fine and not a charge. BW conceded in an email in 2009 that it does not have the power to levy fines for overstaying and the transfer to CRT did not create a power to levy fines. It is therefore outside the powers in s.43 of the 1962 Transport Act and any inclusion in the terms and conditions of the boat licence of a requirement to pay such charges does not bring these charges within the powers available to CRT under s.43 of the 1962 Transport Act.

The 1962 Act allows for charges to be made for services and facilities and this is clearly intended to cover reasonable remuneration for those services. However, the charge must relate to the value of what is provided or other associated costs incurred by CRT. As regards the use of land the value is the value of the occupation or the consequential damages (see the judgement in *MOD v Ashman* [1993] 25 HLR 513).

CRT has asserted that it can levy such charges simply by virtue of its rights as landowner. This is misleading because a body exercising statutory powers cannot rely on the common law rights of a landowner to empower it to levy such charges (see for example the judgement in *Swan Hill Developments v British Waterways Board* [1997] EWCA Civ 1089).

Failure to follow Short Term Moorings Framework for Change

No evidence of the need for further restrictions in visitor mooring time limits or for additional lengths of visitor moorings has been presented by CRT to justify these proposals. The consultation is not supported by any statistics showing the frequency of incidences of boaters being unable to find mooring spaces in the locations covered by the consultation.

CRT's Short Term Moorings Framework for Change (March 2015) states on page 3 under heading "3a Monitoring":

"By identifying individual craft you can convert this information in to total utilisation of the mooring based upon the length of the craft sighted v the total length of mooring available".

The data collected from monitoring the proposed sites in Berkhamsted, Marsworth, Braunston and Batchworth has not been analysed by comparing the total boat lengths moored at each site with the total length of mooring available. The quantitative monitoring of the sites has not been carried out according to the specification in Short Term Moorings Framework for Change. CRT has not provided any evidence to justify any of these changes. No meaningful analysis of demand is possible. Since CRT has not followed its own procedure, the whole consultation should be scrapped.

The failure to collect this key information, without which no valid decisions can be made, demonstrates that the proposals are a further part of CRT's unlawful strategy to reduce the numbers of boat dwellers without home moorings. At present there is a mix of moorings at most of the sites that includes 14-day moorings. There should be no further reduction in 14-day mooring space on the waterways. Any more reductions in 14-day mooring space will be detrimental to all boaters whether they are on holiday, on an extended cruise, week-ending around the system or living aboard. Holidaymakers and those on long cruises will be prevented from exploring the waterways and visiting canalside towns and villages at the pace they choose; weekenders will be severely inconvenienced, and boat dwellers will be prevented from staying for 14 days when this is what they need to do.

Equality

This consultation is completely silent on how the Equality Act rights of boaters would be upheld by the proposed mooring restrictions. CRT has not provided any evidence that it has carried out an assessment of the equality impact of its proposed policy. It is required to carry out such an assessment on all of its policies before implementation. Since no evidence of an equality assessment is included in the consultation, it must be assumed that CRT is in violation of the Equality Act 2010 in this instance. Until an equality impact assessment of the proposals is carried out, the proposals should not go ahead.

Prejudice against Bargee Travellers

In Berkhamsted, two organisations, the Berkhamsted Citizens Association and the Berkhamsted Canal and River Partnership, the latter a partner organisation in the CRT consultation process, have taken the proposals as decided before the consultation time frame is over and have made derogatory comments about Bargee Travellers wanting to stay in their town. It is clear that the proposed restrictions in Berkhamsted have been developed with the interests of these groups in mind and not the interests of boaters, who

are CRT's chief group of paying customers. In colluding with prejudice in this way, CRT is effectively making it clear that the interests of this group of its boating customers, some of whom pay CRT thousands of pounds a year, are not important. The NBTA is opposed to any collusion with prejudice against Bargee Travellers and calls upon CRT to challenge such prejudice and to defend the interests of its boating customers by abandoning the proposed restrictions on boating and to stop undermining its customers' interests.

Petition

As of 29th February 2016, some 868 people have signed the petition below:

<https://you.38degrees.org.uk/petitions/stop-the-reduction-of-mooring-times-at-batchworth-braunston-and-marsworth/>

CRT should take note of some of the comments from petition signatories, for example:

“The CRT seems to be adopting a policy of gentrification of the canals, totally at odds with their industrial origins. To 'sanitise' the waterways in this way is both short-sighted and grossly undemocratic, surely not qualities a registered charity would wish to be known for. The character of our canals is important, it should be protected not destroyed.”

“How long before similar restrictions are in place at the Grove, Hunton Bridge, Kings Langley etc . In fact across the entire system. All boaters need to recognise the fact that there is a hidden agenda against them and such mooring proposals are the start of a campaign that aims to make it impossible to continuously cruise. Fail to sign and you deserve to lose what you have and remember even if you boat 200 miles away that this is just the start and will soon be coming your way.”

“CRT has adopted a non democratic and aggressive position against those who choose to live and travel our waterways. Soon then later we will be forced into a position of having to adopt a direct action strategy against this persecution or loose our basic right to travel.”

“It is not needed and is the usual sledgehammer to crack a nut reaction by CRT.”

“The greatest joy of boating is enjoying a slower pace of life. This would limit the experience of visiting, and limit the contribution that boaters can make to the area by abbreviating their stay.”

“This is a classic case of solving a problem that simply doesn't exist.”

“It is sometimes important to moor the boat close to transport and leave it for a few days, these restrictions will cause hardship to many.”

“If crt are allowed to do this then I foresee in future no mooring allowed at all.”

“The more often people are made to move, the more maintenance costs and policing costs increase . Its a spiteful and short sighted attitude.”

Berkhamsted

Almost the entire central Berkhamsted pound, with its water point, is proposed to be converted to 48 hour mooring only, with the two pounds below being reduced to 7 days. At

least one stretch below the Berkhamsted pound will become 'no mooring'.

The pound above Berkhamsted is unmoorable. There are a lot of boats in Berkhamsted, so there will be a lot of displacement, and it will turn Berkhamsted into no-go zone for boaters without home moorings, who will have to traverse several pounds before they get to a place they can moor for two weeks, which will be already full of boats.

Berkhamsted should stay as it is; there is no evidence that any restrictions or 'no mooring' areas are needed. To make a section 'no mooring' will remove 6 or 7 boat lengths from an area that CRT claims there is pressure on visitor moorings; this is completely counter-productive and has no navigational safety justification. Any further restrictions are excessive and unlawful.

Boaters should be able to moor in Berkhamsted for 14 days as they can do now. Any further restrictions to time limits are excessive and unlawful.

Marsworth

Some 300 metres at Marsworth are also to become 48 hour. This will turn Marsworth into a no-go zone for boaters without a home mooring, who will have to travel beyond Marsworth before they can get to a place where they can stay for 14 days There is no need for any restrictions at Marsworth. The standard 14 days in any one place with no other restriction is sufficient. Any further restrictions to time limits are excessive and unlawful

Braunston

As stated above, to impose so- called 'extended stay charges' and 'no return within' time limits are not lawful and not reasonable.

The NBTA proposes the following alternatives to the proposals in this consultation:

CRT should abandon these unlawful, draconian and excessive proposals and implement a voluntary, consensual code of conduct regarding the use of visitor moorings. Any problems of overstaying should be dealt with by consistent and fair enforcement of the 14-day rule. The vast majority of boaters will move if they receive a lawful, valid enforcement notice.

Creating lengths of purpose-built visitor moorings encourages their use because they are easier to use than mooring spikes and gangplanks. Consistent and fair enforcement of the 14-day rule should be combined with dredging and bank maintenance that would enable more stretches of the towpath without purpose-built rings, bollards and hard edges, to be used for mooring so as to discourage the use of existing visitor moorings by boaters who wish to stay in an area for 14 days.

These measures will leave a small number of deliberate overstayers, a manageable case-load for enforcement staff. CRT has the power to move a boat which is causing an obstruction without notice under s.8 5 of the 1983 British Waterways Act. Getting moved by CRT would be a more effective deterrent to overstaying than £25 per day charges which boaters on low incomes simply cannot pay and therefore do not view as a deterrent.

**National Barge Travellers Association
February 2016**