
**NATIONAL BARGEE TRAVELLERS ASSOCIATION
OXFORD CITY COUNCIL
PUBLIC SPACE PROTECTION ORDER
CONCEPT CONSULTATION
RESPONSE BY THE NATIONAL BARGEE TRAVELLERS ASSOCIATION**

SUBJECT: Oxford City Council; Public Space Protection Order (Waterways);
Concept Consultation:
Response by the National Bargee Travellers Association
DATE: 21st September 2016
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VERSION: 1

1 INTRODUCTION AND HISTORY

1.1 *The NBTA*

- 1.1.1 Precise numbers of live-aboard boaters are unknown. The Canal & River Trust (“CRT”) licences the majority of boats on the waterways of the UK.
- 1.1.2 The number of CRT licences in issue is approximately 35,000. It is believed that approximately the same number again is spread across (a) the remaining 20 navigation authorities and (b) the coastal area administrations.
- 1.1.3 Approximately 45% of boats licensed by CRT are lived on by their owners as their primary or only residence. Approximately 12% of boats licensed by CRT are lived on by itinerant live-aboard boaters (Bargee Travellers, “BTs”).
- 1.1.4 These statistics are imprecise because, unlike land-based travellers, BTs have hitherto been excluded from the bi-annual caravan counts and Gypsy and Traveller Accommodation Assessments (“GTAAs”).
- 1.1.4 The National Bargee Travellers Association (“NBTA”) supports BTs who travel the waterways of the UK. The NBTA also has Associate Members who have permanent moorings or who support the NBTA but are not boat-dwellers themselves.
- 1.1.5 With a membership that includes a substantial proportion of the travelling boater community the NBTA supports vulnerable boat dwellers to protect themselves from the draconian actions of navigation authorities and other public bodies. It does this through case-work executed by a network of NBTA Caseworkers.

1.2 *PSPO-W*

- 1.2.1 This paper is a consultation response to the invitation by Oxford City Council (“OCC”) to comment on the feasibility of a Public Space Protection Order for the waterways lying within the jurisdiction of OCC (“PSPO-W”).
- 1.2.2 OCC has referred to the PSPO-W as being a replacement to the “Unlawfully Moored Boat Enforcement Group” (“UMBEG”). UMBEG is not constituted by statute and is a partisan group of private and public bodies.
- 1.2.3 The draft PSPO-W is draft legislation. It has been the attempt of OCC to impose PSPO-W without proper consultation.

1.2.4 It is not obvious how a partisan group can lead, unchecked, to draft legislation unless it is clear that OCC was seeking to permit the democratic process to be suspended.

1.2.5 Further, for the democratic process to operate properly it is not a logical step to go directly from the operation of a partisan group to legislation.

1.3 **UMBEG**

1.3.1 The NBTA first became aware of UMBEG in late 2010 with an indication that UMBEG was established on or around October 2010. It also became apparent that the founding sponsors of UMBEG were Councillors Pressel and Cooke. It later became apparent that Councillor Pressel owns a property in Jericho close to the Oxford Canal and Councillor Cooke owns a property on the Botley Road not far from the Thames at Iffley Bridge. Therefore both councillors had a vested interest in what UMBEG purported to do and so both were therefore conflicted.

1.3.2 It became apparent to the NBTA that, OCC aside, UMBEG was also populated with representatives of the Environment Agency ("EA") being the navigation authority with responsibility for the River Thames / Isis in Oxford, British Waterways ("BW") (now CRT) being the navigation authority with responsibility for the Oxford Canal, Thames Valley Police ("TVP"), Oxford University and certain private riparians.

1.3.3 UMBEG is an unofficial (non-statutory) association of these bodies and private sector participants. Its title is offensive for two reasons.

1.3.4 Firstly its title suggests that its interest is directed towards those engaged in something unlawful. The reason why this proposition is a flawed assumption is addressed below. However the presumption of unlawfulness on the part of BTs in Oxford in a context where due process of the (wrongfully) alleged wrongdoing is absent gives rise to the implication of a violation of Art 6 ECHR. It also suggests public sector vigilantism.

1.3.5 Secondly its title also suggests that its role is enforcement. Yet UMBEG was a self-constructed, unofficial, non-statutory partisan grouping in which
(i) the private vested interest of at least one member of OCC; and
(ii) the interests of certain private sector bodies,
were involved. For a partisan group to appoint itself to engage in enforcement goes beyond "unlawful". It speaks of activity outside of the scope of regulation and thus ultra vires. It implies engagement in activity by a body that is, itself, out of control.

1.3.6 OCC has engaged in repeated attempts to harass and otherwise unlawfully evict BTs from its jurisdiction. When this activity is cross-referenced to the minutes of the meetings of UMBEG it becomes clear that continuous traffic was exchanged between the private sector participants in UMBEG and OCC and this led to unlawful "enforcement" action on the part of OCC.

1.3.7 Several attempts was made by the NBTA and other boater interest groups to interact with UMBEG. These were rebuffed and in one instance a representative was refused admission to an UMBEG meeting. The minutes of UMBEG were requested and refused. They were requisitioned by means of the Freedom of Information Act, by the NBTA, of certain participating members. One member provided the minutes, here:
https://www.whatdotheyknow.com/request/umbeg_meetings_since_may_2014
https://www.whatdotheyknow.com/request/umbeg_minutes_since_january_2013

https://www.whatdotheyknow.com/request/umbeg_meetings_since_november_20
https://www.whatdotheyknow.com/request/umbeg_meetings_since_july_2012

- 1.3.8 OCC denied that minutes existed: see here:
https://www.whatdotheyknow.com/request/imbeg_umbeg_meeting_july_2010
https://www.whatdotheyknow.com/request/umbeg_meetings_3
https://www.whatdotheyknow.com/request/unlawfully_moored_boats_enforcem
- 1.3.9 OCC published the minutes on its web site on 27th May 2016 here:
https://www.oxford.gov.uk/downloads/download/718/umbeg_meeting_minutes
- 1.3.10 However the date of publication by OCC was after the PSPO-W process was under way thus skewing the early part of this process. This matter was therefore referred to the ICO under reference FER0629858. On 25th July 2016 the ICO upheld the complaint and censured OCC.
- 1.3.11 The NBTA discovered that the PSPO-W project was under way within OCC on 25th November 2015. A second FoI requisition was made to OCC seeking the documents underpinning the drafting of the first draft of PSPO-W, here:
https://www.whatdotheyknow.com/request/public_space_protection_orders
- 1.3.12 OCC denied that the project was under way when it clearly was. This matter was also referred to the ICO and remains before the ICO.
- 1.3.13 Chris Bell, a member of OCC personnel, is the originating author of the draft PSPO-W. He is also one of the key proponents of UMBEG, minuted as appearing as representative of OCC at UMBEG meetings. He is also known to be an ardent challenger of boaters moored on the banks of the river and canal within the jurisdiction of OCC.
- 1.3.14 Mr Bell has also the subject of internal inquiry within OCC having unlawfully boarded a vessel (that was immobilised) owned and occupied by a vulnerable young woman as her only residence.
- 1.3.15 Mr Bell did this in a context that calls into question the bona fides of his own conduct and thus the composition of OCC within UMBEG itself. Given that OCC was the founder of UMBEG this puts into grave question this entire activity.

1.4 ***Housing and Planning Act 2016***

- 1.4.1 The NBTA notes that the Housing and Planning Act 2016 (“HPA 2016”) received Royal Assent on 12th May 2016. s.124 of HPA 2016 requires OCC to assess the accommodation needs of BTs. The mandatory guidance of the Secretary of State for Communities that accompanies the new legislation is here:
<https://www.gov.uk/government/publications/review-of-housing-needs-for-caravans-and-houseboats-draft-guidance>
- 1.4.2 This is draft guidance and the officer of DCLG responsible has requested feedback on the first draft. The NBTA was pleased to respond and the Secretary of State has confirmed that further input from the NBTA has been accepted. In July 2016 the SoS confirmed that the final version would be released some time shortly afterwards.
- 1.4.3 HPA 2016 stipulates that Housing Authorities are required to engage in periodic (i.e. 2-yearly) accommodation needs assessments of BTs. The guidance stipulates that in

the execution of this duty, the Housing Authorities are obligated to consult with the NBTA in formulating and conducting the needs assessments.

1.4.4 There are notable differences in the demographic between land-based travellers and BTs and while there are some similarities, there are also stark differences between the needs of BTs and those of land-based travellers.

1.4.5 However the thrust of GTAAs for BTs (“GTAA-BT”) are for Housing Authorities to review on a bona fide basis the accommodation needs of BTs and then act constructively on those assessments. BTs own their own homes. Unlike land based travellers, BTs have a lawful entitlement to moor both on the banks of the Thames in Oxford and on the towpath of the Oxford Canal. It follows that when OCC performs a review of BTs needs in a GTAA-BT the primary element being evaluated must include an assessment of mooring needs and the provision of ancillary services.

1.4.6 The NBTA also observes that although the HPA 2016 is relatively new the NBTA has already been approached by a number of LAs to consult in methodology in the conduct of a GTAA-BT. The NBTA notes that OCC has not done so even though the NBTA has raised this prospect with OCC.

1.5 ***Other Conflicts of Interest***

1.5.1 On 19th August 2016 the NBTA became aware of a letter that had been served at that time on a boater moored on the Thames near Eynsham. The letter required the boater to move his boat essentially at no notice.

1.5.2 The letter had been served by Savills for the Oxford Preservation Trust.

1.5.3 The content of the letter closely resembled the wording used in the unlawful enforcement letters served on boats in the jurisdiction by OCC.

1.5.4 The NBTA observes that Councillor Cook and Mr Fry (the husband of Councillor Pressell) are both trustees of the Oxford Preservation Trust.

1.6 ***Introductory Conclusions***

1.6.1 In the view of the NBTA a public body riparian should be supporting the needs of vulnerable BTs moored within (or who pass through) its jurisdiction. How this plays out is clearly subject to local conditions but as a general principle BTs need support not persecution.

1.6.2 The thrust of UMBEG was to purge the waterways within Oxford of BTs. The contextual “evidence” allegedly justifying the PSPO-W is skewed so as to be prejudiced against BTs. The language used in the first draft PSPO-W makes it clear, at best, that BTs are not welcome in Oxford and, at worst, seeks to prevent BTs from existing within its jurisdiction. These points are clarified below.

1.6.3 The conclusion therefore that the proposition that OCC, as a housing authority, should be engaging in the PSPO-W initiative, that is materially diametrically opposed to its obligations under s.124 is, to say the least, a bankrupt one.

1.6.4 This combination gives rise to a general perspective of persecution of BTs by OCC. Conversely OCC is tasked with positively seeking to support the accommodation needs of BTs. The NBTA puts OCC to task to justify how it reconciles these two

apparently irreconcilable policies.

2 CONDUCT OF THE CONSULTATION

- 2.1 The draft PSPO-W came to the attention of the NBTA on 2nd March 2016 as a result of a press release made by Richard Adams in the Oxford Times at that time.
- 2.2 The phraseology used by Mr Adams led the NBTA to believe that the “deal was done”. No consultation had been conducted at that time.
- 2.3 The NBTA consulted OCC and discovered that in fact that matter was to be considered by the Scrutiny Committee on 7th March 2016.
- 2.4 The minutes of the Scrutiny Committee dated 7th March 2016 state
“The Committee AGREED to submit the following recommendation to the City Executive Board:
1. That the Council should revise the documentation, draft [PSPO-W] and consultation proposals in collaboration with interested parties before consulting on an improved proposal for an Oxford [PSPO-W].”
- 2.5 On 17th March 2016 Richard Adams prepared and issued to the Executive Board a briefing report entitled "Oxford Waterways Public Spaces Protection Order Consultation". The purpose of the report was stated as:
"To propose consultation on a Public Spaces Protection Order for the principal waterways of Oxford". The Recommendation of the report was *"That the City Executive Board resolves to approve consultation on a Public Spaces Protection Order for the principle waterways of Oxford."*
The draft PSPO-W was included in Annexe 2 of the report.
- 2.6 The opening paragraph of the briefing of 17th March 2016 stated
"[OCC] has been working with interested parties to address problems associated with the waterways for many years. [UMBEG] brings together [OCC], Police, [EA], [CRT], colleges and societies who have land on the waterways. The group works together to identify solutions to the problems of illegal mooring, pollution, disputed land ownership and environmental concerns."
- 2.7 The NBTA notes that not only had it never been consulted by either UMBEG or OCC but efforts by the NBTA to engage in constructive dialogue have invariably been rebuffed by UMBEG or OCC respectively. This has included in the instant process until the NBTA raised formal complaint. Therefore the assertion that OCC had been *"... working with interested parties..."* is clearly untrue.
- 2.8 There was no question then that the clear objective of the Officers was to see the draft PSPO-W approved by the Executive Committee. No boater groups had been involved in the preparation of PSPO-W. There was thus no question that the general thrust of the “consultation” was with the members of UMBEG alone. The Guidelines on Consultation in essence require OCC to have consulted with all affected parties including BT representative groups and BTs themselves. OCC was in breach of the Guidelines on Consultation. This undermines the bona fides of OCC.
- 2.9 This is a counter-productive step as the entire purpose of consultation is to build by consensus appropriate ways of addressing genuine societal difficulties and disputes. A genuinely democratic society prides itself on not seeking to develop draconian,

biased and oppressive mechanisms for persecution of minority groups.

- 2.10 As clarified above the history behind UMBEG and the precursor discussions behind the preparation of the draft PSPO-W are obviously intrinsically linked in with this project. It was therefore essential in the interests of an open and transparent debate that the NBTA was made aware of the interests of the principal actors in this issue. This information had previously been withheld, as the FoI requisition of UMBEG minutes revealed redactions of the identity of private sector interested parties.
- 2.11 Accordingly on 25th March 2016 the NBTA made an FoI requisition for the precursor correspondence relating to this project here:
https://www.whatdotheyknow.com/request/waterways_public_space_protectio
- 2.12 OCC produced its non-compliant response on 2nd June 2016, two and a half months later. The requisition was not properly responded to in that OCC failed to provide the information. OCC provided a link to its own web site, to a page that referred to the pre-Consultation itself which does not identify the actors involved in the precursor activities. OCC has also obfuscated in making its responses. Taken together this rendered the FoI requisition meaningless.
- 2.13 On 20th June 2016 the NBTA made a requisition for an internal review of the non-compliance. This internal review was not conducted. On 27th July 2016 the NBTA referred the matter to the ICO. On 27th July 2016 OCC confirmed that it was engaging in the review the NBTA requisitioned on 20th June 2016.
- 2.14 On 10th July 2016 OCC reiterated its non-compliant response of 6th June 2016, and stated that some of the information had been provided by e-mail by Ms Davies to the NBTA on 6th June 2016. The NBTA has never received an e-mail from someone called Davies of OCC. OCC did not make available to the NBTA the product of its review. The matter has been referred on to the ICO.
- 2.15 The Executive Board of OCC sat on 17th March 2016. Ahead of the meeting the Scrutiny Committee submitted to the CEB a paper entitled "Scrutiny Committee reports for City Executive Board - Thursday 17 March 2016". This document states the recommendations of the Scrutiny Committee including the vote to adopt the proposal of making the following recommendation to the CEB:
"That the Council should revise the documentation, draft ... [PSPO-W]... and consultation proposals in collaboration with interested parties [including the NBTA] before consulting on an improved proposal for [PSPO-W]."
- 2.16 The NBTA was in attendance at the meeting and noted that the Executive Committee agreed to engage in review of the *concept* of a PSPO-W and not a specific PSPO itself, and noted that the issues in hand might be addressed through a different mechanism to a PSPO.
- 2.17 The minutes of the 17th March 2016 of the Executive Board state that it resolved to:
"1. Approve consultation on [PSPO-W], as amended ... subject to the following condition: ... that the [Officers] should consider all the points raised by Scrutiny and ... specifically, that [they] will ensure effective engagement with ... [the] NBTA ... prior to commencement of the public consultation process."
- 2.18 On 19th May 2016 a document entitled "Public Involvement Project Brief. Public Space Protection Order (PSPO) Waterways" (the "Brief") was approved by Ian Brooke.

- 2.19 Paragraph 1.1 of the Brief states:
"1. Why is the project needed?" City Executive Board (CEB) has resolved to consult on Waterways Public Space Protection Order (PSPO).."
- 2.20 This is untrue: the Executive Committee instructed the Officers to operate a project in which the concept of a PSPO-W was to be evaluated, specifically not to evaluate the draft PSPO-W. It follows that the Officers are not following the instructions of the Executive Committee and are thus out of control.
- 2.21 On two occasions after 17th March 2016 the NBTA sought to engage with OCC to consult on the concept of a PSPO-W.
- 2.22 On 10th June 2016, absent engagement from OCC, the NBTA filed a complaint with Mr Tim Sadler for OCC in relation to the absence of consultation by OCC. A meeting was held between Mr Sadler and the NBTA on 6th July 2016. Mr Sadler confirmed that OCC would send an invitation to the NBTA to respond.
- 2.23 The NBTA received an e-mail from OCC timestamped 15th July 2016 inviting it to engage in the pre-consultation. The NBTA notes that this was less than one week prior to the deadline of 22nd July 2016 for filing responses.
- 2.24 Finally on 26th July 2016 the NBTA received a paper invitation letter dated 22nd June 2016, requesting a response to the Concept Consultation. The final sentence of the letter states *"I will send a copy of this letter by post and look forward to hearing from you"*. It was therefore apparent that the letter was to be sent by e-mail on or shortly after 22nd June 2016. This did not take place as instructed.
- 2.25 It is clear to the NBTA therefore that over three months after the Executive Board had instructed OCC to consult the NBTA the efforts by the officers to do precisely this were lackadaisical at best and obfuscatory at worst.
- 2.26 Conversely another boater interest group was invited to submit a consultation paper to OCC on 22nd June 2016.
- 2.27 Also in the meeting of 6th July 2016, on the suggestion of the NBTA, Mr Sadler confirmed that he would instruct his officials to facilitate a series of meetings with the NBTA to explore alternative routes to a PSPO. The NBTA received an e-mail from OCC timestamped 5th August 2016 seeking suitable dates to commence this process.
- 2.28 In conclusion it is clear that the consultation has been, in its present form, a sham and does not reflect the instructions of the Executive Committee of OCC. The NBTA regretfully observes that the conduct of this process has been less than exemplary.
- 2.29 The NBTA proposes to OCC that it might like to re-evaluate how the process has unfolded to learn from not only the procedural non-compliances that have been manifest in the process but a singular lack of understanding of the needs of a significant sector of its constituency.
- 2.30 Looking forward the NBTA is encouraged by the apparent willingness of OCC to engage in the interests of developing not only an "alternative" to the draft PSPO-W but seeking a bona fide engagement both with OCC and other actors involved in this dispute.

2.31 The NBTA believes that this approach will yield the greatest likelihood of success, success being measured in terms of conciliation between the aggrieved parties.

3 STATUTORY RIGHTS

3.1 Opening Comments

3.1.1 The NBTA notes that the Executive Board instructed the officers to engage in consultation with the NBTA on the *concept* of a PSPO-W. This implies that general headings may be appropriate discussion points. The instruction also implies a review of the alleged antisocial behaviour (“ASB”).

3.1.2 What the CEB specifically did not mandate was pre-consultation on a review of detailed language of the draft PSPO-W. Therefore the inclusion by the officers of a copy of the draft PSPO-W means that the officers have exceeded their remit.

3.1.3 This paper therefore reviews the allegation of ASB and the headings rather than the detailed language used in the draft PSPO-W.

3.2 Criminalisation of Normal Domestic Activity

3.2.1 Some elements of the alleged ASB that the draft PSPO-W implies is, in fact, normal domestic activity for boat dwellers and is not antisocial at all.

3.2.2 Indeed there are some activities that certain members of the land-dwelling community engage in against BTs that is antisocial in the extreme and yet these activities have not been raised let alone entertained in this exercise.

3.2.3 Further, some of the alleged ASB that the original draft PSPO-W is in fact perpetrated by land-based dwellers and not BTs at all.

3.2.4 What is vital for OCC to comprehend is that the “normal activities” that are clearly targeted by PSPO-W renders criminal the normal domestic existence of BTs.

3.2.5 The BT thus has two alternatives:
(a) cease and desist in “normal domestic activity”; or
(b) leave the jurisdiction of OCC.

Item (a) gives rise to a violation of Art. 8 ECHR.

Item (b) gives rise to an instance of ethnic cleansing and (among other things) a violation of Art. 8 ECHR.

3.2.6 s.59 of the the Anti-Social Behaviour, Crime and Policing Act 2014 (the “Act”) states:

“Power to make orders

(1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.

(2) The first condition is that—

(a) activities carried on in a public place within the authority’s area have had a detrimental effect on the quality of life of those in the locality, or

(b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

(3) The second condition is that the effect, or likely effect, of the activities—

(a) is, or is likely to be, of a persistent or continuing nature,

(b) is, or is likely to be, such as to make the activities unreasonable, and

(c) justifies the restrictions imposed by the notice.”

- 3.2.7 Much of what is targeted in the draft PSPO-W attacks what amount to the normal day-to-day activities of BTs. These normal day-to-day activities have been long-established custom and practise.
- 3.2.8 It can never have been the intention of the Legislature, in making the Act, to provide for a mechanism whereby custom and practise of a minority group is criminalised.
- 3.2.9 There is no question that s.59(3)(b) of the Act comes into sharp focus under this head.

3.3 *Respect for Home*

- 3.3.1 The PSPO Draft in no way embraces the implications of Art 8 ECHR. There is no evidence of a compliance review. The NBTA has considerable experience of the impact that draconian policy has on the Convention rights under Art 8 ECHR of itinerant live aboard boaters.
- 3.3.2 In its work in casework the NBTA has identified that full-scope proportionality assessments have demonstrated that similar draconian policies (from which each action was bought) have been violating of Art 8 ECHR.
- 3.3.3 There is no question that home is sacrosanct (see *Kay v UK* [2010] ECtHR (Application no 37341-06) at [68]).
- 3.3.4 It follows that the pressing need of boat-dwellers to remain safe in their homes (which includes the right to moor within the jurisdiction of OCC) must be upheld.
- 3.3.5 The draft PSPO-W appears to pander to the claimed needs of a small minority who wish to see the BTs removed from the jurisdiction of OCC. Setting aside the conflicts of interest and vested interests, In preparing the draft PSPO-W OCC is clearly not respecting this pressing need. It follows that the condition established in s.59(3)(b) of the Act is not met.

3.4 *Equality*

- 3.4.1 OCC conducted what purports to be an Equality Impact Assessment (the “EIA”) of the draft PSPO-W. The EIA claims that the draft PSPO-W will not have a differential impact on race, age or pregnancy.
- 3.4.2 The casework that the NBTA has completed demonstrates that:
- (a) Irish Travellers are not infrequently boaters;
 - (b) boaters are regularly older people with significant health-related difficulties;
 - (c) younger female boaters are frequently pregnant or are caring for infants under 6 months of age;
 - (d) boaters regularly have children of school age;
 - (e) boaters regularly care (as the primary carer) for locally based land-dwelling relatives or parents; and
 - (f) there is a higher preponderance of mental health issues prevalent within the boating community.
- These are all “Protected Characteristics” as defined in the Equality Act 2010 (“EA 10”).

- 3.4.3 In its casework the NBT has secured for some of its clients Reasonable Adjustments in relation to these protected characteristics.
- 3.4.4 Each of these Protected Characteristics will be substantially adversely impacted by the material effect of the draft PSPO-W.
- 3.4.5 It is untrue to say, therefore, that the demographic is not substantially adversely impacted by the draft PSPO-W.
- 3.4.6 In turn this suggests that the Officer responsible for this draft policy has not sought sufficient advice on the conducting of an EIA.
- 3.4.7 It is also important to note that in the case of CRT the Equality and Human Rights Commission has intervened because of the non-compliance of CRT in relation to its draconian policies that impact on these Protected Characteristics.

3.5 Competing Legislation

British Waterways Act 1995

- 3.5.1 Within the jurisdiction of CRT (i.e. on the Oxford Canal, within the environs of the City of Oxford) a navigator is entitled under s.17(3)(c)(ii) British Waterways Act 1995 to moor on the towpath in any one place for 14 days:
“ ... the vessel ... will be used bona fide for navigation ... without remaining continuously in any one place for more than 14 days or such longer period as is reasonable in the circumstances.”
- 3.5.2 The draft PSPO-W seeks to circumvent this primary legislation. It is not possible to trump primary legislation with tertiary legislation (insofar as a PSPO would arise from local enactment). OCC thus has no authority to do this and would thus be acting ultra vires in seeking to do so.

Public Right of Navigation and Thames Conservancy Act 1932

- 3.5.3 Since time immemorial there has been a public right of navigation (“PRN”) on all navigable rivers within the United Kingdom (see *Tate & Lyle Industries Ltd v Greater London Council* [1983] 2 AC 509, 545 at [page 24 [“Public Nuisance”], *Moore v BW* [2013] EWCA Civ 73 (“Moore”) a [59].
- 3.5.4 The act of mooring (for a reasonable time) is considered to be ancillary to navigation: see *Crown Estate Commissioners v Fairlie Yacht Slip Ltd* [1978] ScotCS CSIH 3 at [page 19: Lord Cameron's speech referring in turn to *Gann v. Free Fishers of Whitstable* (1864) 11 H.L.C.].
- 3.5.5 “Reasonable” cannot be determined in advance but on the facts of the case. See *Original Hartlepool Collieries Company v Gibb* (1877) 5 Ch D 713, Moore at [63].
- 3.5.6 On the River Thames (within the jurisdiction of the EA and thus within the environs of the jurisdiction of OCC) the PRN is codified in s.79 of the Thames Conservancy Act 1932 (“TCA 32”). Under s79 TCA 32 a navigator is entitled to moor ancillary to navigation:
“ ... it shall be lawful for all persons to go be pass and repass in vessels over or upon any and every part of the Thames through which Thames water flows including all such backwaters creeks side-channels bays and inlets

connected therewith as form parts of the said river....

The right of navigation in this section described shall be deemed to include a right to anchor moor or remain stationary for a reasonable time in the ordinary course of navigation ... and the Conservators shall make special regulations for the prevention of annoyance to any occupier of a riparian residence by reason of loitering or delay of any house-boat or launch ...:

Provided that nothing in this section or in any byelaw made thereunder shall be construed to deprive any riparian owner of any legal rights in the soil or bed of the Thames which he may now possess or of any legal remedies that he may now possess for the prevention of anchoring mooring loitering or delay for any vessel ... “

- 3.5.7 In Halsburys Laws of England 5th Edition at [691] the right to moor is stated as being superior to the rights of a riparian. The codification of the PRN is stated such that the right to moor is maintained: see *Josie Rowland v Environment Agency* [2003] EWCA Civ 1885 at [142].
- 3.5.8 So it is clear that when these authorities and this statute are taken together:
- (a) there is a PRN on the Thames;
 - (b) the PRN is codified;
 - (c) the PRN includes the right to moor;
 - (d) the duration of the mooring activity is determined by the “reasonableness test”;
 - (e) it is the role of the EA to protect riparian interests; and
 - (f) the PRN does not supplant riparian rights; but
 - (g) riparian rights cannot be used to subvert the PRN (and thus mooring on an ancillary basis).
- 3.5.9 What is not provided for is for a riparian to establish further control over a navigator or to remove the PRN.
- 3.5.10 OCC is a riparian on some parts of the towpath river bank of the Thames. However the EA holds jurisdiction in relation to navigational matters. This means that OCC is thus not entitled to pass the PSPO-W in relation to moorings on the towpath land over which it is riparian.
- 3.5.11 There are also parts of towpath river bank over which OCC is not riparian but holds jurisdiction as the local authority. For OCC to pass the PSPO-W in relation to these areas would be to subvert the PRN codified in the TCA 32. Additionally OCC is not entitled to pass the PSPO-W in relation to private land. OCC would thus be acting ultra vires.
- Merchant Shipping Act 1995***
- 3.5.12 Although the Merchant Shipping Act 1995 (“MSA 95”) is normally associated with shipping in a maritime context it also embraces (a) inland waters in certain circumstances and (b) smaller vessels. It also clarifies the sovereignty of a Master of a vessel not least of which because of the role that a Master plays in relation to safety on board, for his crew, the vessel, other personnel and passengers, other vessels and himself. See *Moore -v- BW* HC 07 C 02340 (skeleton to the main trial; Moore won his case).
- 3.5.13 This responsibility (with the attendant powers) is rarely understood by the land-

dwelling community.

- 3.5.14 s.104 MSA 95 states:
*“Unauthorised presence on board ship.
Where a United Kingdom ship or a ship registered in any other country is in a port in the United Kingdom and a person who is neither in Her Majesty’s service nor authorised by law to do so—*
(a) *goes on board the ship without the consent of the master or of any other persons authorised to give it; or*
(b) *remains on board the ship after being requested to leave by the master, a constable, an officer authorised by the Secretary of State or an officer of customs and excise,*
he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”
- 3.5.15 The definition of “United Kingdom ship” is established in s.85 MSA 95 and includes all vessels fit for navigation.
- 3.5.16 The Thames in Oxford is within scope by virtue of paragraph 3.2 of Maritime and Coastguard Agency (“MCA”) Notice MSN 1837 (M) (“Categorisation of Waters”) when taken with its annexe.
- 3.5.17 A “port” is a place at which a United Kingdom ship is moored where there is precedence for loading or unloading in the vicinity. See *Humber Conservancy Board v Federated Coal & Shipping Co* [1928] 1 KB 492. This therefore includes Oxford.
- 3.5.18 As the powers of a Master include controlling (and restraining) others (including in principal officers of OCC and Thames Valley Police, as neither are authorised within s.104 MSA 95) it follows that the effect of a PSPO is supplanted by the power conferred in s.104.
- 3.5.19 The MCA has confirmed that s.104 MSA 95 is within scope but has stated that a prosecution has never taken place inland.
- 3.5.20 OCC has stated in writing to the NBTA that it disagrees that the MSA has effect in Oxford. OCC claims that it has taken advice from the MCA and claims that the advice underpins the position of OCC.
- 3.5.21 It follows that at the very least respect must be given to the powers conferred on a Master under s.104 MSA and an attempt by OCC to subvert this authority is clearly ultra vires.

4 EVIDENCE

4.1 Introductory Comments

- 4.1.1 Upon review of the evidence made available the NBTA sees no clear connection between mooring by itinerant live-aboards and the ASB complained of. The NBTA does however see clear signs of anti-live-aboard prejudice. When this is taken with the fact that one of the lobbyists behind PSPO-W has been described by CRT as a “vexatious complainant” it follows that the evidence is far from satisfactory.
- 4.1.2 From NBTA casework the NBTA has identified that is that some of the behaviour alleged as being “antisocial” (with the assumption that this is prosecuted by land-

dwellers) is actually mitigated by the presence of BTs.

- 4.1.3 The NBTA has also identified, in the evidence, reference to ASB that is plainly not perpetrated by live-aboard boaters.
- 4.1.4 The NBTA also notes that the apparent policy of CRT is to cleanse its jurisdiction of itinerant live-aboard boaters.
- 4.1.5 The notes laid out above clarify the underpinning political objective of UMBEG as being none other than draconian and lacking in balance. It follows that the "evidence" proffered by OCC is highly subjective and thus its veracity is undermined.
- 4.1.6 The NBTA also notes that the majority of the photographs proffered by OCC are in fact photographs taken by Jon Ody and were attached to complaints made by him to OCC. The NBTA notes that Mr Ody is in fact a BT and a member of the NBTA. Mr Ody has confirmed that most of his complaints were about issues that were non-BT related.
- 4.1.7 Specific comments on the "evidence" submitted by OCC are as follows:

4.2 *Obstructing the Footpath, River or Canal Banks or Waterway*

- 4.2.1 Photographic evidence is put forward to support the proposition that "boaters obstruct footpath, river or waterway banks".
- 4.2.2 The NBTA does not advocate the wholesale obstruction of the towpath by BTs.
- 4.2.3 Conversely the grass verge provides a place to park such items as bicycles and children's' buggies. This avoids the prospect of engaging in the dangerous activity of, for example, seeking to carry these items along a boat gangplank.
- 4.2.4 In some instances a mobility scooter has been parked on the towpath verge so as to avoid driving it over a loading ramp. The NBTA reminds OCC of its Public Sector Equality Duty to take active steps to support people with disabilities as clarified in s.149 et seq. of EA 10.
- 4.2.5 Considering that while a BT is moored, the immediate environs of the boat (and not simply the boat itself) become to varying degrees part of the BTs home, the proposition that a boater must keep his possessions off the grass verge is, in fact, encroaching upon the privacy of a BTs home environment and thus violating his Convention rights under Art 8 ECHR.
- 4.2.6 Land-dwellers would quite rightly be aggrieved if they were told that they could not park vehicles outside of their houses, chain their bicycles to the front of their house or leave their buggies on the pavement for periods of time.
- 4.2.7 Therefore not only is it disproportionate to seek to prevent a BT from doing this. It also violates the BTs rights and is discriminatory.
- 4.2.8 I address mooring as an act ancillary to navigation above: mooring is not ASB.

4.3 *Erecting Structures by the Side of the Waterway*

- 4.3.1 The NBTA doe not advocate the erection of structures on the towpath by BTs.

- 4.3.2 BTs do not normally erect structures on the towpath. However BTs (and other navigators alike) often have barbecues on the towpath. Barbecues are operated in a wide range of places including for example on the beach.
- 4.3.3 While some people might find this inconvenient to their way of thinking this is nonetheless normal behaviour. It would thus be draconian to criminalise this behaviour, discriminatory if this were done on a basis that singled out BTs and generally repugnant.
- 4.3.4 The majority of fishermen use fishing shelters or tents to shelter from sun, rain or other inclement weather in order to remain warm and dry especially when fishing at night. This has been common practice for many years.
- 4.3.5 If “structure” includes “tent or shelter” then the PSPO-W would immediately criminalise the majority of fishermen. This would be draconian, disproportionate and in any event repugnant to the common law.
- 4.3.6 The NBTA also observes that the majority of fishermen are not BTs.
- 4.3.7 The NBTA observes that CRT routinely uses gazebos on the towpath as a focal point for charitable fund raising. It follows that CRT itself would be criminalised by PSPO-W. This gives rise to an absurdity, in turn ultra vires OCCs public law duties.
- 4.3.8 The NBTA observes that some of the things erected on the towpath can include protective equipment for example umbrellas or sun shades. It follows that one outcome of PSPO-W would be to criminalise the use of protective equipment which is routine behaviour and certainly not ASB. This cannot be just.
- 4.3.9 Some BTs have been known to erect small tents to shelter their pets from sun or wind and rain. To criminalise this type of behaviour is disproportionate, ignores the obligations of pet owners to look to the welfare of their pets and is generally repugnant.

4.4 *Creating Smoke Pollution that Causes Annoyance to Others*

- 4.4.1 It is unclear whether this provision of the proposed PSPO-W is addressing the allegation of smoke pollution caused by heating exhaust or engine exhaust. For the purposes of this section the NBTA is addressing the proposition of heating exhaust, specifically emissions from wood burner / coal burner stack pipes.
- 4.4.2 For the avoidance of doubt it is assumed that the majority of BTs burn wood or coal in wood burners/stoves. Some BTs use smokeless fuel in any event. Some BTs use coke which is also essentially smokeless.
- 4.4.3 Some BTs use “Eberspacher” or equivalent oil-fired central heating systems although these are not common.
- 4.4.4 Some BTs use gas heating but this is rare because (a) of the gas consumption rate (which is inconvenient when the vessel is usually equipped with 13kg gas bottles); and (b) because of the inherent condensation arising from burning gas which causes profound damp in a boat. In any event using gas on this scale gives rise to safety concerns because of the statistically increased probability of a gas-related accident.

- 4.4.5 BTs (like all navigators who navigate their vessels during winter months) need to heat their living space. This is especially the case where the navigator is standing outside of the vessel in order to steer the boat and has to then “warm up” again inside.
- 4.4.6 Since the advent of vessels occupied by humans these vessels have been heated by burning a fuel of some kind. It is custom and practise for a BT to burn fuel in a wood burner and is therefore not ASB. OCC is therefore seeking to criminalise, with PSPO-W, custom and practise. This is ultra vires.
- 4.4.7 In the present day in which NOx emissions are to be reduced it is appropriate to burn wood. However given the small size of the boating community it is quite reasonable for BTs to burn coal as the NOx emissions are de minimis. It was for this reason that BTs were excluded from the Clean Air Act 1993 by virtue of no order being made under s.19 of that Act.
- 4.4.8 In any event the Clean Air Act refers to Dark Smoke as specified in a Ringelmann Smoke Chart. Smoke from a stack pipe when burning wood or coal is usually very light (or white) in colour and in no way approaches the specification of Dark Smoke as defined by Ringelmann.
- 4.4.9 Parliament had the opportunity to address the possibility of mischief caused by light smoke emissions from marine stack pipes but elected not to do so. Only Dark Smoke is addressed.
- 4.4.10 It follows that as a general principle light smoke is permitted by the Clean Air Act. It follows that the BTs that might generate smoke from stack pipes would not be generating Dark Smoke and thus not violating of the Clean Air Act.
- 4.4.11 It follows that in an attempt to address alleged “nuisance” (which in any event is disputed) OCC is seeking to subvert primary legislation with PSPO-W. It follows that PSPO-W is ultra vires.
- 4.4.12 In any event the NBTA notes that the “smoke” that appears in the photographic evidence is in fact not Dark Smoke. The single evidence photograph showing “smoke” appears to have been taken on a misty day and it is unclear whether the “smoke” is in fact smoke or fog. No analytical evidence is proffered by OCC in support of the measure that seeks to quantify smog effects. It follows that the provision is ultra vires.
- 4.4.13 The NBTA also observes that it would a violation of a BT's Convention rights under Art 8 to seek to curtail the ability of a BT to heat his home.
- 4.4.14 In relation to “annoyance to others” this element of s.1(3) of the Act includes a proportionality test. It cannot be proportionate to hold “annoyance” (which is unquantified and relates to the facts of the matter which cannot be identified in advance) above the right granted by of Art 8 to maintain a home at a habitable temperature.
- 4.4.15 The NBTA also notes that any house-dweller who elects to burn leaves in his back garden adjoining the canal or river will be generating smoke in larger quantities than could ever be expected from a marine wood burner.
- 4.4.16 It must therefore reasonably be assumed that the assertion that the generation of smoke by a vessel gives rise to ASB is spurious.

4.4.17 It follows that this measure of the PSPO-W is ultra vires.

4.5 *Creating Fumes Pollution that Causes Annoyance to Others*

4.5.1 It is unclear whether this provision of the proposed PSPO-W is addressing the allegation of fumes pollution caused by heating exhaust or engine exhaust. For the purposes of this section the NBTA is addressing the proposition of engine exhaust.

4.5.2 The majority of marine engines are maintained in good condition because the propulsion engine of a vessel is an element of its safety equipment. Should an engine fail when under way on a river in spate the results can be catastrophic and lead to loss of life.

4.5.3 A well maintained engine emits very little NOx and no Dark Smoke. A new engine will be manufactured to bear a CE label and thus meets the EU emissions requirements for NOx. It follows that in both cases marine engines do not emit fumes pollution.

4.5.4 BTs have routinely since the advent of electricity and diesel engines used their engines to generate power to charge the house batteries. In recent times many BTs use renewable energy generating sources including wind turbines and solar panels reducing the need to run the engine to generate power.

4.5.5 It is an intrinsic part of a BTs energy budget that power is required to light the dwelling, operate the potable water pumps, operate the shower pump and other 12v electrical appliances.

4.5.6 Lighting one's home, using potable water and other electrical appliances is an intrinsic part of modern society.

4.5.7 Thus to participate in modern society BTs require power and it is custom and practise that this is generated using, among other things, the ship's engine or a generator.

4.5.8 It has been long-standing custom and practice to use the engine as the primary source to generate this power.

4.5.9 PSPO-W is seeking to criminalise the running of engines (although for the reasons stated above this is disputed) and therefore deny BTs the opportunity to charge their domestic batteries, thus denying them the right to operate the electrical appliances as stated above. This cannot be just and is therefore ultra vires.

4.5.10 In any event the Terms and Conditions of Licensing issued by CRT stipulate that engines shall not be operated (unless as a consequence of vessel navigation) between the hours of 20.00 and 08.00. It follows that between 08.00 and 20.00 engines may be run.

4.5.11 The Terms and Conditions of Licensing arise by virtue of s.43 of the Transport Act 1962. It follows that PSPO-W is thus seeking to subvert primary legislation and is thus ultra vires.

4.6 *Creating Noise Pollution that Causes Annoyance to Others*

4.6.1 It is unclear whether this provision of the proposed PSPO-W is addressing the allegation of noise caused by "people being noisy", the operation of vessel engines or

the operation of portable generators.

4.6.2 The assertion of “people being noisy” is not specific to BTs. Any person who engages in noisy behaviour may be challenged by the Police under existing powers. In any event the question of proportionality arises and this cannot be determined in advance.

4.6.3 It follows that the blanket ban on “noisy behaviour” that is implied by PSPO-W is draconian and thus not proportionate. Further it seeks to subvert primary legislation and is thus ultra vires.

4.6.4 In relation to the operation of vessel engines and portable generators this is covered above in paragraph 4.5.4 et seq.

4.7 *Damaging Habitats*

4.7.1 The waterways are BTs “back yard”. The NBTAs experience of supporting BTs is that BTs do not damage habitat. The assertion that BTs damage habitat is therefore spurious. In any event no evidence is proffered by OCC in support of this allegation.

4.7.2 Conversely there is the suggestion offered by the NBTAs that the over use of waterway towpaths by land-based pedestrians has led to interference with habitat by these people.

4.7.3 Equally the tarmacking of large tracts of towpath in favour of cyclists has led to “race tracks” that threatens the use of the towpath by boaters and pedestrians.

4.7.4 It follows that the provisions of PSPO-W erroneously target BTs and are thus mis-founded. It follows that PSPO-W is ultra vires.

4.8 *Damaging Waterways Infrastructure*

4.8.1 BTs rely on waterways infrastructure as this equipment is vital to safe navigation. It is therefore a myth that BTs have any interest at all in damaging waterways infrastructure.

4.8.2 Conversely there is some evidence available to the NBTAs that some vandalism of waterways equipment and other assets has been perpetrated by land-dwellers. This includes graffiti on the arches of bridges and damage to towpath caused by lock paddles being left open on purpose resulting in flooding.

4.8.3 In any event no evidence is proffered by OCC that there has been damage to waterways infrastructure that is attributable to BTs and therefore this measure is spurious. It is thus ultra vires.

4.9 *Alcohol Abuse*

4.9.1 OCC claims that BTs are responsible for abuse of alcohol that results in disorder. It is custom and practise for BTs and other navigators alike to consume alcohol both on the decks of boats and on the towpath.

4.9.2 Indeed recreational boat users are more likely to consume alcohol while sitting in their deck chairs on the towpath than BTs as this is characteristic of “being on holiday”.

- 4.9.3 No evidence is proffered by OCC that asserts that BTs consume alcohol on the towpath in a manner that is likely to give rise to ASB.
- 4.9.4 Conversely there is plenty of anecdotal evidence that land-based people consume alcohol on the towpath including while fishing.
- 4.9.5 It is therefore a misnomer to assert that BTs should be prevented (through PSPO-W) from consuming alcohol on the towpath. The measure is thus ultra vires.

4.10 Control of Dogs

- 4.10.1 To the best knowledge of the NBTA the ownership by BTs of more than three dogs is so rare as to be de-minimis. This is particularly the case when one considers the limited space on a vessel.
- 4.10.2 Conversely it is not unheard of for land-dwellers to have a number of dogs and it is not infrequent for the number to exceed three.
- 4.10.3 It is therefore a spurious argument to assert that BTs engage in ASB through the ownership of multiple dogs. The provision in PSPO-W does not engage genuine mischief and is therefore ultra vires.
- 4.10.4 The exception to this argument is the instance where a female dog has a litter of puppies.
- 4.10.5 Further, the owner is responsible for the welfare of his dog (and thus her offspring). To interfere with the postnatal care of puppies by their mother (implied by PSPO-W) would be to criminalise decent behaviour which cannot be just. It follows that the PSPO-W is ultra vires.
- 4.10.6 BTs “live and breathe” the waterways. The towpaths are their “back yards” and it is thus in the interests of BTs to keep them clean. Many BTs have dogs and to the knowledge of the NBTA are scrupulous in the collection of their dog faeces when walking their dogs.
- 4.10.7 The NBTA is in receipt of some anecdotal evidence of land-based dog-walkers collecting dog faeces in plastic-bags and then dropping these bags adjacent to BTs boats in a manner likely to lead to the suspicion that the BT was guilty of this. While an infrequent occurrence this happens (on a national basis) frequently enough to lead to the assumption that these are deliberate attempts to discredit BTs.

5 Alternatives to PSPO-W

5.1 Introductory Comments

- 5.1.1 The NBTA notes that the minutes of the Scrutiny Committee of 7th March 2016 stated as follows:
- “The Committee identified a number of concerns about the proposed consultation, including but not limited to:
- ...
- Whether some issues could be resolved if a more collaborative approach was taken to addressing these with interested parties such as UMBEG (Unlawfully Moored Boat Enforcement Group) and NBTA (National Barge Travellers

Association)”

- 5.1.2 The NBTA welcomes the opportunity to engage on this footing.
- 5.1.3 The NBTA notes that UMBEG is an unofficial (non-statutory) association of public sector (and some private sector) bodies and as such it is not possible, in law, for OCC to canvass liaison between UMBEG and the NBTA to address these concerns. As a public body, OCC is on responsibility to address its own issues and not delegate to a non-statutory partisan grouping.
- 5.1.4 However 7 months on from the meeting no substantive communication between UMBEG and the NBTA has taken place let alone a “collaborative approach”. The NBTA does not find it helpful to labour the history behind this lack of engagement. Looking forward the NBTA proposes direct engagement between other boater groups, other stakeholders, the NBTA and OCC.

5.2 *Mooring Strategy Steering Group*

- 5.2.1 Between 2010 and 2013 the NBTA was engaged in a difficult liaison between other boater groups, local government, key stakeholders and BW in a project referred to as the Mooring Strategy Steering Group of the K&A (“MSSG”). The work was chaired initially by BW and latterly by Wiltshire Council.
- 5.2.2 The liaison involved routine meetings, every quarter, between participants to work up a consensus on how to address what was alleged as mooring congestion in Bath and the immediate environs. After much liaison a consensus was reached and the work product of MSSG published.
- 5.2.3 As BW was being particularly belligerent during the early work of MSSG a significant number of boaters unilaterally drew up a Code of Conduct that, the grouping asserted, represented compliance with the legislation as understood by the group having received formal advice.
- 5.2.4 The group called this Code of Conduct “Co-Co”. In general Co-Co laid down the practical implementation of compliance with the legislation together with certain elements not embraced within the legislation including “being good neighbours”, mooring in a way that supported less experienced boaters (specifically hire boat skippers and crews), disposal of rubbish and so on.
- 5.2.5 Each participant then signed a declaration attached to Co-Co that pledged compliance with the Code. These boaters then displayed stickers in their boat windows saying “I Signed Co-Co”.
- 5.2.6 The exercise was repeated by the new CRT Local Waterways Partnership (with some concepts carried over from MSSG to the LWP exercise). This was because BW/CRT did not accept the work product of MSSG although the work product of the LWP project was adopted by CRT in May 2014 for an interim period.
- 5.2.7 Nonetheless the NBTA has considerable experience in finding common ground with key stakeholders even in a context of overt prejudice.

5.3 *Navigation Liaison Group Oxford*

- 5.3.1 The NBTA therefore proposes the immediate establishment of a working group to act

as a forum for discussion between key stakeholders of difficult subjects associated with navigation within the jurisdiction of OCC.

- 5.3.2 This group should be open, organised and fair; it should be chaired by someone who is recognised as impartial and, in particular, specifically not a prior member of the UMBEG grouping. Membership should be open to anyone with an interest. If possible members of a grouping should be represented but this should not be an exclusive policy provided that the numbers do not become unmanageable.
- 5.3.3 UMBEG should be immediately disbanded (including the issue of a statement confirming this). Prior members of the disbanded group are to be invited to participate in the liaison.
- 5.3.4 The initial work product of the new group shall be the preparation and ratification of a Code of Conduct for boaters in Oxford. Boaters should be encouraged to abide by the Code of Conduct by signing a declaration. Conversely if the community concludes that such a step was oppressive then the Code of Conduct should instead be a clarification of what is expected of a "good neighbour".
- 5.3.5 Non-compliance with principles of common decency and being "good neighbours" may be addressed through existing legislation.
- 5.3.6 The working group thus becomes a forum for discussion of difficult issues arising on the waterways within the jurisdiction with a remit to reach consensus agreements between the parties including but not limited to mediation of intractable disputes and finding alternative outcomes to unreconcilable issues.

6 EXPERIENCE OF THE NBTA IN RELATION TO ASB

6.1 *Introductory Comments*

- 6.1.1 Given the size of the membership of the NBTA and the involvement of the NBTA in casework the NBTA has considerable experience of ASB by both BTs and members of the land-dwelling community.
- 6.1.2 There is no question that within some areas there is prejudice extended to BTs by certain members of the land-based community.
- 6.1.3 There is also no question that certain members of the navigating community (essentially recreational boaters) exhibit prejudice against BTs.
- 6.1.4 There is further significant commercial vested interest that manifests itself as direct prejudice extended against BTs and lobbying by these interests via the navigation authority. CRT has confirmed that this is the case. All of these behaviours give rise to ASB.
- 6.1.5 In some instances the behaviour goes beyond ASB as it also involves elements of discrimination.
- 6.1.6 As is to be expected the BT community is minded to "look after its own" which, one might expect, might lead to isolation and subsequent marginalisation. However the perception of the NBTA is that BTs are far more integrated into mainstream society through social, political, legal and intellectual connections.

- 6.1.7 Social networking also plays a big part in this integration. There are now over 30 Facebook pages that represent the interests of different BT groups across England and Wales.
- 6.1.8 In addition there are several international boater groups on Facebook in contact with the NBTA. A problem emerging in one part of the UK is regularly known to the world-wide boating community within a few hours.
- 6.1.9 Equally it is social networking that provides for the community to protect itself in a way that appears not to be as marked within the land-dwelling community. The BT community is cohesive, inclusive and strong. Thus as a generalisation ASB demonstrated against BTs usually results in the community “rallying around”.
- 6.1.10 The NBTA is opposed to anything that amounts to vigilantism and so far it is not aware of these types of sentiments taking root. However the NBTA is also aware that patience is frayed, tempers are high and tolerance low. It is therefore strategically important that a non-confrontational encounter group is established as a matter of urgency.
- 6.1.11 It is relevant to note that the London area is one of the busiest parts of the inland waterways system yet few of the issues identified as justifying the PSPO-W are found in the London area and none to the extent alleged by OCC or UMBEG. It follows that UMBEG in particular and potentially OCC has unreasonably over-emphasised the alleged mischief that PSPO-W purports to address.

6.2 Refuse

- 6.2.1 Refuse disposal is a normal part of a BTs domestic existence. All navigation authorities and most private boat yards provide refuse disposal. The question that regularly arises is “how often” and on some navigations refuse disposal is infrequent.
- 6.2.2 Because of the budget constraints of the navigation authorities negotiations are under way between some local boater representative groups and local authorities for the provision of additional refuse disposal points.
- 6.2.3 Within the jurisdiction of OCC some additional provision was made in 2014 by OCC for refuse disposal over the summer months. However the skips were locked outside of this period, thus defeating the opportunity of BTs to use these as well. This was a counter-productive step in terms of engendering good will.
- 6.2.4 The NBTA is aware of virtually no “fly tipping” by BTs.
- 6.2.5 This anecdotal evidence is unsurprising as the BTs see the towpath as their “back yard” and are inclined to keep their domain clean and tidy. There is no question that occasionally a boat will depart from a particular length of towpath leaving behind a rubbish bag or other material on the grass verge. The consequence is usually outrage expressed by BTs using social media and the perpetrator is usually “named and shamed”.
- 6.2.6 Conversely there is no shortage of anecdotal evidence available to indicate fishermen and other towpath users leaving litter on the towpath. As the refuse disposal sites provided by the navigation authority are limited in size CRT has experimented with deploying skips every 6 months or so and declaring “rubbish amnesties” permitting larger objects to be disposed of. This appears to have been

successful but it was noted by CRT that what was quite obviously non BT rubbish accumulated in these skips. For example no BT has a need to use plasterboard or other builders' waste.

- 6.2.7 In the case of the jurisdiction of OCC there is some anecdotal evidence of fly tipping on the towpath by members of the anti-BT faction in an attempt to attach blame to the BT community. This sort of behaviour is unacceptable.
- 6.2.8 As a general principle where rubbish disposal facilities are in plentiful supply fly tipping by the BT community is absent.
- 6.2.9 Additionally the NBTA is aware of, and has organised, "tow path tidies" over the years in which BTs engage in sweeps of the towpath collecting rubbish, litter and fly-tipped refuse.
- 6.2.10 What is encountered in these sweeps is that the refuse is normally identified as being left by every type of towpath and waterway user: walkers, cyclists, fishermen, hire boaters, live-aboard boaters and fly-tipping by house dwellers.
- 6.2.11 The towpath tidies are a highly successful projects and have the multiple benefits of (a) demonstrating to the land-based community that the BTs care for the environment for benefit of both BTs and the land-based demographic (b) tidying up the environment (for its own sake) and (c) improving the "back yard" of BTs.

6.3 Noise

- 6.3.1 As a general principle BTs are not a community that is noted for being rowdy. Being an inherently itinerant community if there is a desire for a "noisy party" then the BTs involved in organising the party tend to lead the party-goers to a remote country spot away from house-dwellers so that the noise effects of a loud party cause no adverse effect.
- 6.3.2 In other respects the NBTA has rarely heard of land-dwellers making complaints of noise by BTs.
- 6.3.3 The notable exception to this was found in Islington where land-dwellers made repeated complaints of BTs running engines. The geographic properties of the site accentuated the effect of noise. This was addressed through mediation.
- 6.3.3 Unlike land-dwellers, BTs also have the flexibility to move to a quieter place if there is loud noise at a given location.
- 6.3.4 BTs are by-and-large in tune with nature and loud noise is not compatible with this philosophy.

6.4 Dogs

- 6.4.1 Many BTs have one or more dogs. It is unusual for BTs to have more than two dogs because of the relatively confined space on a boat.
- 6.4.2 The exception to this generalised principle is the instance of a female dog having puppies.
- 6.4.3 Generally BTs know how to look after their dogs and take care to ensure that dog

faeces are collected and disposed of. Again this is an instance of BTs looking after their “back yards”.

6.4.4 Again BTs who are exceptions to this generalisation are usually “named and shamed” on social media.

6.5 *Pollution*

6.5.1 The primary source of pollution on the part of BTs, known to the NBTA, is the dumping of effluent into the canal or river. The NBTA does not endorse this behaviour.

6.5.2 Some boats are equipped with “Elsan cassettes” - toilets with a removable sealed cassette that can be emptied into an “Elsan Point” provided by the navigation authority. Others have a holding tank that is emptied with vacuum pump-out equipment provided by the navigation authority at pump-out locations.

6.5.3 In general where a BT cannot navigate to an Elsan disposal point the cassette is disposed of by digging a hole and burying the contents. This may be less obnoxious in a rural environment but in an urban setting this is usually not possible. However in an urban setting a removable sewer cover may be accessible in such a pressing circumstance.

6.5.4 The predominant factor in relation to canals is that the water is essentially stagnant and depositing Elsan contents into the canal is obvious and obnoxious. Social pressure is rapidly brought to bear.

6.5.5 There is already legislation available to prevent sewage disposal in rivers or canals including but not limited to Regulation 40 of the British Waterways Canal Byelaws 1965 and Regulation 66 of The Thames Navigation Licensing and General Byelaws 1993. It follows that this aspect of the draft PSPO-W is unnecessary.

6.6 *Towpath Obstructions*

6.6.1 It is not uncommon for BTs to leave items on the grass verge of the towpath rather than carry them onto the boat. This is specifically the case with large items that would have to be precariously carried along a gangplank.

6.6.2 There is no question that some stretches of towpath, an agreement having been entered into between CRT and Sustrans, have been tarmacked and become race tracks. In the case of the stretch between Bradford on Avon and Bath race times between BoA and Bath are published on social media.

6.6.3 It follows that it is unwise for a BT to place anything on the towpath because it is not only vulnerable to being stolen but also at risk from being crashed into by a speeding cyclist.

6.6.4 It is a term of the licensing by CRT that the towpath is not used for storage. In a seizure sweep along the western K&A in 2015 items that were not being stored, but were in daily use, were removed by CRT contractors. This included the removal of buggies and cycles. There was a public outcry on the grounds that the measure was grossly disproportionate. Items were returned and the exercise not repeated.

6.6.5 In conclusion while BTs do use the towpath for parking of buggies, cycles and in

some cases fire wood this is a transitory behaviour consistent with “moving on” after 14 days. As a general principle BTs take their possessions with them and are scrupulous in relation to not leaving anything behind when they move on.

6.7 *Mooring Without the Consent of the Land Owner*

6.7.1 The NBTA has found that where BTs moor without the consent of a riparian landowner (noting the provisions identified above in relation to mooring ancillary to navigation) the matter is usually dealt with through mediation in the case of a private sector landowner.

6.7.2 In the case of public sector landlords the disputes have been bitter and hard-fought not least of which because (a) (from the perspective of the BT) of the duty a public sector landlord owes to boaters within its jurisdiction and (b) (from the perspective of the riparian) precisely the opposite.

6.7.3 Attempts have been made to mediate in terms of establishing regularised moorings but these efforts have only been greeted with marginal success.

6.7.4 As a general principle the vested interest of local (usually wealthy) private sector riparians being bought to bear through lobbying the local authority can usually be identified as the root cause.

6.7.5 In the case of the London Borough of Richmond on Thames this led to the unlawful establishment of byelaws criminalising mooring in a way that was repugnant to the general law. This has not yet been challenged in the High Court.

6.8 *Obstructing the Footpath, River or Canal Banks or Waterway*

6.8.1 Obstruction of the waterway (whether canal or river) is a navigational matter over which OCC holds no jurisdiction and is therefore not addressed here.

6.8.2 The NBTA articulates its views above in relation to potential obstruction of towpaths (taken to mean canal or river towpaths but excluding grass verges).

6.8.3 There have been few complaints that have come to the attention of the NBTA, either from bona fide complainants or boaters, of obstruction of towpaths. Within the jurisdiction of CRT some substantial complaints have been bought by BTs against CRT for taking away items that have justification for being left on the verge.

6.8.4 In other respects complaints of this nature rarely occur.

6.9 *Erecting structures*

6.9.1 The NBTA finds the prospect of a BT “Erecting structures by the side of the river or canal bank without the consent of the land owner” curious as this sounds a most unlikely scenario for BTs who inherently move every 14 days (within CRTs jurisdiction) or more or less with the same frequency as this (other navigation authorities).

6.9.2 In cases where boaters have permanent moorings (i.e. non-BTs) usually the mooring agreement provides for the siting of structures on the off-side of the navigation, on private land and is therefore outside of the scope of PSPO-W. This applies equally to cases where boaters are moored on their own land.

- 6.9.3 The NBTA is aware of the occasional siting of simple structures on an ad-hoc basis in the environs of a waterway but this was artistic works (sculptures) and thus a special case.
- 6.9.4 The NBTA has come across a case of a boater squatting on the off-side and establishing an encampment. This was however on private land which was then tolerated by the landowner. The encampment contained significant artistic content and the artist himself (who had previously been homeless) had created a home for himself that was not offensive to the eye. Indeed he became a character of interest for tourists and attracted many photographers. This was a special case.
- 6.9.5 Where squatting does occur on the off-side this is usually accompanied by attempts at adverse possession, in other words a bona fide process and thus outside of the scope of PSPO-W.
- 6.9.6 Squatting does not usually occur on the towpath side not least of which because of enforcement action by the navigation authority.
- 6.9.7 Extensive placement of items on the towpath side is usually due to cleaning or painting the boat" and is short-lived. Taking a proportionate approach this does not constitute ASB.

6.10 *Smoke Pollution*

- 6.10.1 The NBTA is aware of a single instance where smoke pollution has been cited as the basis of complaint against BTs. This was adjacent to a particular street in London where the canal is in a cutting in an urban area and when temperature inversions occurred this resulted in smoke collecting in the street and the canal cutting. In this instance the matter was disposed of through mediation.
- 6.10.2 In other respects no complaints have been brought to the attention of the NBTA, including from Oxford.
- 6.10.3 Conversely the burning of wood by BTs is seen as sustainable, interesting, an example to others (in contrast to burning gas which is not a sustainable fuel) and generally acceptable.

6.11 *Fumes Pollution*

- 6.11.1 No complaints have been brought to the attention of the NBTA, including from Oxford, of complaints arising from the allegation of pollution caused by exhaust fumes.

6.12 *Noise Pollution*

- 6.12.1 The NBTA has not been made aware of complaints arising from the allegation of noise pollution associated with the running of engines and generators except in Islington.
- 6.12.2 In general this has been a self-regulating issue, in which a member of the local community might make complaint to the boater, the boater may object to the complaint (on the grounds that the complaint is unreasonable) but the boater then moves from the vicinity as this constitutes "an easy life".

6.13 *Damage to Habitat*

- 6.13.1 No complaints alleging damage to habitat by BTs have been brought to the attention of the NBTA.
- 6.13.2 The NBTA is aware of a relatively high preponderance of tree surgeons and gardeners within the BT community. These people are more inclined to attend to issues arising from fallen vegetation (including trees) in the vicinity of the waterway including towpaths and the navigation itself.

6.14 *Damage to Waterway Infrastructure*

- 6.14.1 No complaints alleging damage to waterway infrastructure by BTs have been brought to the attention of the NBTA.
- 6.14.2 The NBTA is aware of BTs volunteering (or seeking to volunteer) to provide time towards maintenance of the infrastructure.
- 6.14.3 The NBTA is also aware of BTs engaging in “guerilla maintenance” where the navigation authority has been tardy in performing or has failed to perform essential maintenance. The NBTA has engaged in dialogue with CRT in particular towards regularising these efforts.
- 6.14.4 £0.25m damage was inflicted on one part of the canal system in 2015 because of vandalism (interference with lock paddles late at night) that resulted in flooding and the washing away of the towpath further down hill. This damage would have been alleviated if the navigation authority water level SCADA data had been available to the NBTA. Efforts have been under way to make the SCADA data available in real-time to the NBTA. This data from some navigation authorities is already available.

6.15 *Alcohol Abuse*

- 6.15.1 No complaints alleging ASB arising from abuse of alcohol by BTs have been brought to the attention of the NBTA.

6.16 *Dog Control*

- 6.16.1 No complaints alleging ASB arising from a failure of BTs to control dogs have been brought to the attention of the NBTA.
- 6.16.2 The NBTA has some anecdotal evidence of dogs being injured by speeding cyclists.
- 6.16.3 As presented above the NBTA has some anecdotal information relating to non-BTs seeking to attach blame for ASB on to BTs.

7 CONCLUSIONS

- 7.1 This paper lays out why PSPO-W as drafted will fail to meet the proposed objective.
- 7.2 However it is also clear that there is a subtext behind PSPO-W which is to purge the City of Oxford of BTs. The subtext appears to be driven by a small minority possessed of vested interest.
- 7.3 PSPO-W could in principle achieve this objective this would be matched with civil

disobedience, litigation including but not limited to judicial review proceedings, political challenge within the City and general disruption to the BT community. This would be counter-productive from all directions.

- 7.4 In addition the NBTA takes the view that the proposed PSPO-W fails on a long list of counts in relation to compliance with other, primary, legislation. As such the thrust of PSPO-W, in riding roughshod over this competing legislation, is repugnant to the law and challenges the fundamental concepts of what a democratic society purports to be.
- 7.5 OCCs past efforts to engage alleged “mischief” with a PSPO (the issue of drinking and begging in central Oxford) has demonstrated itself to be not fit for purpose. Indeed it can be said that the concept of a PSPO itself is flawed although this is a matter for Parliament and not regional government.
- 7.6 Finally OCCs mission statement sound-bite is “Building a world class city for everyone”. The NBTA concludes that this should read “ Building a world class city for everyone – unless you are a live-aboard boater”.
- 7.7 The NBTA finds the concept of PSPO-W highly offensive on a number of counts and is wholly opposed to its composition and the trajectory that the project is taking.

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21st September 2016
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