

National Barge Travellers Association

Evidence for Women and Equalities Select Committee Inquiry into Inequalities faced by Gypsy, Roma and Traveller Communities

Executive Summary

- Barge Travellers have few rights and these are frequently ignored or violated
- There are no accurate statistics for the number of Barge Travellers on the UK's waterways
- A majority are working people on low incomes
- Barge Travellers on Canal & River Trust waterways are being subjected to a punitive and unlawful enforcement policy instigated in 2015 that forces them to travel distances that put their homes, jobs and their children's education at risk
- Barge Travellers on other navigation authorities' waterways experience similar attempts to pressurise them to leave the waterways
- The Housing and Planning Act 2016 brought boat dwellers into the ambit of local authority accommodation needs assessments for the first time
- In many cases they lack regular access to basic facilities
- Barge Travellers experience barriers and inequality in accessing health care, welfare benefits, electoral registration and postal mail
- They experience financial exclusion and digital exclusion
- The NBTA makes a number of recommendations regarding navigation authorities, central Government and local Government.

Introduction

1. 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. This 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. The NBTA deals with approximately 200 individual cases each year.
2. The navigable inland waterway system in Britain is home to an estimated 15,000 to 50,000 Barge Travellers. There are at least 21 inland navigation authorities in the UK. Canal & River Trust (CRT) is the largest, with around 80% of the UK's inland waterways. Other significant navigation authorities are the Environment Agency (EA); the Broads Authority; the Conservators of the River Cam; the Middle Level Commissioners; Peel Holdings (the Bridgewater Canal) and British Waterways Scotland. A smaller number of Barge Travellers/ boat dwellers live in coastal harbours and estuaries controlled by harbour authorities.

General

3. The reason the NBTA is making this submission is because Bargee Travellers have few rights, and these are frequently ignored or violated.
4. Bargee Travellers are subject to enforcement by navigation authorities and also by local authorities in the case of publicly owned riparian land and/or moorings on rivers, estuaries and harbours. Much of the riparian land on rivers and estuaries is privately owned; the same applies to land on the off-side of most artificially constructed canals, including modern marinas. Bargee Travellers are also subject to enforcement, usually eviction, by private land owners.
5. There are no accurate figures for the numbers of Bargee Travellers in any area. Estimates for the total population in the UK are based on the number and categories of boat licences issued by different navigation authorities combined with navigation authority boat owners' survey questions about whether boat owners live on their boats. The 2016 CRT Boat Owners survey states that of the sample, 16% of boaters without a permanent mooring and 10% of boaters with a permanent mooring use their boat as their permanent home. This does not differentiate between residential and leisure moorings but of CRT's own moorings, less than 10% of its 4000 or so mooring sites have residential planning consent. Far fewer than 10% of private moorings have residential planning consent.
6. Bargee Travellers are typically either working people on low incomes, or retired people living on the State Pension and/or small fixed incomes. A study in 2011 by Kennet and Avon Boating Community showed that 80% of Bargee Travellers were working; that 51% had an annual income of £20,000 or less; that 40% had an income below the minimum wage and that only 14% claimed welfare benefits. See <http://kanda.boatingcommunity.org.uk/wordpress/wp-content/uploads/2011/10/KA-boaters-survey-interim-report.pdf>

Rights of Bargee Travellers

7. A common law Public Right of Navigation has existed on all navigable natural rivers since Time Immemorial and is recorded in the Magna Carta of 1215. The Public Right of Navigation extends to those parts of natural rivers that have been canalised or diverted in order to improve navigability; see *Moore v British Waterways* [2009] EWHC B12 (Ch). Legislation may exist that requires the boat to be registered or licensed, but any such legislation cannot override the Public Right of Navigation because this ancient right takes precedence. Halsbury's Laws of England states that the Public Right of Navigation includes the right to moor for undefined temporary periods on the river banks, including on private land, without payment to riparian land owners (Halsbury's Laws of England, 5th edition, paragraph 691). This is based on case law dating back to the nineteenth century.
8. Additionally, on the waterways under the jurisdiction of CRT, which include both rivers and artificially constructed canals, boat owners are entitled to use and live on their boats without a permanent mooring by virtue of Section 17(3)(c)(ii) of the British Waterways Act 1995 and to moor their boats anywhere on the towpath side of the artificially constructed canals.
9. Navigation authorities, local authorities and private land owners frequently violate or fail to respect the rights of Bargee Travellers. Some local authorities and navigation authorities have passed or are attempting to enact draconian primary legislation, byelaws, Public Space

Protection Orders, licence terms and conditions or re-interpretations of existing legislation that serve to drive Bargee Travellers out of their jurisdiction, in violation of the Public Right of Navigation, the British Waterways Acts or their rights under Article 8 ECHR. The evidence submitted regarding Bargee Travellers on different waterways is not exhaustive; the NBT is aware of Bargee Travellers facing inequality, eviction and threats to their homes on waterways not mentioned in this report.

10. The boat dwellers on the UK's inland and coastal waterways are likely to fall into three categories:

1. Bargee Travellers without a permanent mooring. They are very likely to travel considerable distances. Some of these may take a winter mooring for a few months.

2. Bargee Travellers who live on their boats and rent (or possibly own) a leisure mooring without planning permission for residential use. Some of these boat dwellers may use their mooring all year round but others will travel, especially in the summer. These moorings may be in a marina, a small boatyard or along the line of the waterway, usually on the non-towpath side.

3. People who live on their boats and rent (or possibly own) a residential mooring.

11. The NBT is concerned primarily with inequality affecting those in category 1, but can also comment on those in category 2.

Canal & River Trust (CRT)

12. Boats can be licensed to use Canal & River Trust's waterways without a permanent mooring under Section 17(3)(c)(ii) of the British Waterways Act 1995. This section states:

13. *(ii) the applicant for the relevant consent satisfies the Board that the vessel to which the application relates will be used bona fide for navigation throughout the period for which the consent is valid without remaining continuously in any one place for more than 14 days or such longer period as is reasonable in the circumstances.*

14. Out of a total of approximately 32,000 licensed boats on Canal & River Trust's waterways, only around 5,300 are licensed without a permanent mooring.

15. CRT's *Guidance for Boaters without a Home Mooring* (first published in 2004 and revised in 2011) and its additional 2015 enforcement policy against boaters without permanent moorings set movement requirements that go beyond those stated in Section 17 (3)(c)(ii) of the British Waterways Act 1995.

16. CRT declared on 13th February 2015 that from 1st May 2015 it would refuse to re-license all boats that “don't move ... far enough or often enough” to meet its *Guidance* – unless they take a permanent mooring. Unlicensed boats can be removed and destroyed by CRT using powers under Section 8(2) of the British Waterways Act 1983 and Section 13(3)(a) of the British Waterways Act 1971. In cases where a boat is lived on, CRT obtains a Court Order and also obtains an Injunction banning the boat dweller for life from returning to its waterways. Breach of an Injunction carries the penalty of arrest and imprisonment. Therefore, the boat dweller not only becomes homeless but loses the only asset that they own. Information provided in response to a Freedom of Information request showed that in 2010-2011 the enforcement team had a target to seize 100 “non compliant” boats each year. When boats are seized, CRT contracts Bailiffs to tow the boat away and the Police are

present. If CRT refuses to renew the licence of a boat dweller, there are few, if any, other places that a boat dweller can take their boat.

17. On 3rd March 2015 CRT stated on its web site that "...we can advise that it is very unlikely that someone would be able to satisfy us that they have been genuinely cruising if their range of movement is less than 15-20 miles over the period of their licence. In most cases we would expect it to be greater than this".
18. "Greater than this" has never been defined by CRT. This is fundamentally unjust, contrary to one of the key principles of British law that the citizen should be able to tell when his or her actions would be unlawful. At the time of submitting this evidence, references to "15-20 miles" have been removed from the CRT web site and communications to boaters on this issue now only refer to 20 miles. The *Guidance for Boaters without a Home Mooring* has not been revised to include the reference to 15-20 miles or to 20 miles, suggesting either that CRT itself does not believe this requirement is lawful, or that CRT's intention has always been to gradually increase the distance it claims must be travelled until it has purged its waterways of the majority of Barge Travellers.
19. The effect of this change in policy was that Barge Travellers who have had the same travel pattern for many years and whose licences had been renewed without any issues going back up to 20 years, are now being told that their annual travel patterns no longer comply with the law even though the law has not changed since the 1995 Act was passed. This policy is cruel, punitive, unjust and unlawful.
20. In 2004 British Waterways, the predecessor to CRT, published *Mooring Guidance for Continuous Cruisers*. In 2011 this was revised and re-published as *Guidance for Boaters Without a Home Mooring* as the result of a County Court judgment in the case *British Waterways v Davies*. The Davies judgment meant that CRT made the Guidance less stringent, removing the requirement for "a progressive journey around the entire waterway system or a significant part of it" as the result of the Judge's decision. The 2011 Guidance however, still set requirements for a travel pattern that goes beyond what is stated in Section 17(3)(c)(ii) of the British Waterways Act 1995.
21. In 1990, British Waterways sought powers to force all boats to have a mooring and criminal penalties against anyone caught living on their boat without a permanent residential mooring and a houseboat certificate. Parliament refused British Waterways these powers on the basis that they were harsh and draconian, and acted to protect the 10,000 or so boat dwellers that would have become homeless in 1995 by wording Section 17 (3)(c)(ii) of the British Waterways Act 1995 in such a way that it included a wide variety of patterns of boat use. Parliament heard evidence from boat dwellers who needed to remain close to a place of work, children's education, health care or elderly relatives, and worded the Act to balance their needs with those of the leisure industry and effective management of the waterways.
22. The requirement not to remain continuously in any one place for more than 14 days is clearly stated and lawful. However, the 1995 Act does not contain any requirement to travel a minimum distance or to follow any specific cruising pattern beyond the 14-day limit in order to comply with the requirement to use the boat 'bona fide for navigation'.
23. A draft amendment proposed in the House of Lords Special Report from the Select Committee on the British Waterways Bill, 3rd July 1991, Appendix II, page 15, would have amounted to a requirement for a minimum distance, but this amendment does not appear in the final Act of Parliament. The amendment would have required boats licensed without a

home mooring to “be used bona fide for navigation throughout the period that the consent is valid without remaining in any one place for more than 14 days in any calendar year”. If the amendment had been included, given that the distance between places is at least one mile, these boats would have been compelled to travel in a range of at least 26 miles every year. However, the amendment was dropped, and the Act was passed without any specified distance or range and without any “no-return-within” periods the would have prevented Bargee Travellers going back to places they had visited within a given period.

'Restricted' licences

24. In order to enforce the spurious distance requirement contained in its 2015 enforcement policy, CRT has adopted the practice of restricting the licence renewals of Bargee Travellers whom it considered non-compliant to a limited period of either three months or six months so that they could “improve” their boat movements. The restriction of licence renewal to a shorter period is a direct threat of homelessness to the Bargee Traveller by CRT since it carries the threat of eventual non-renewal of the licence, which leads directly to removal of the boat.
25. The three month licence restriction was applied to those whom CRT considered had moved the least. In November 2015, CRT withdrew the three-month licence restriction and those who move the least are now faced directly with refusal to renew their licence without a home mooring. Those who accept the restricted licence are expected by CRT to cover a 15-20 mile range within the period of the restricted licence, in other words to travel the increased distance in half the time or in 25% of the time, creating even greater hardship. The majority of Bargee Travellers who accept the restricted licence do so because of the threat of removal of their boat, and many have managed to travel the increased range despite the increased hardship and cost.
26. The effect of CRT's 2015 policy on Bargee Travellers has been severe. The majority are being forced to travel distances that make it extremely difficult to stay within reach of their jobs or their children's schools, and make it impossible for them to access health care or to stay near elderly relatives. If they choose to keep their homes they may be faced with the need to give up working, take their children out of school, miss out on vital health care and abandon elderly family members. For many Bargee Travellers, especially families, travelling such distances and enduring extremely long daily journeys to and from school or work either on public transport or by vehicle is not sustainable either financially or physically. Many are living with the stress of the constant fear that next time their boat licence will not be renewed and they will lose their home.
27. Despite the fact that there is no lawful prohibition against Bargee Travellers working, sending their children to school or caring for elderly relatives, CRT's web site states under the heading “Continuous Cruising” that “if you have no ties such as jobs or children at school, you can opt to cruise the canals non-stop” and that “continuous cruising is not an option if you have commitments such as work, family or school in one place as you must be engaged in a genuine, progressive journey around the network”. The reference to a “progressive journey” is contrary to the judgment in *British Waterways v Davies*.
See <https://canalrivertrust.org.uk/enjoy-the-waterways/boating/mooring> and <https://canalrivertrust.org.uk/enjoy-the-waterways/licensing-your-boat/licensing-faqs>
28. The majority of the cases dealt with by the National Barge Travellers Association (NBTA) are those of Bargee Travellers being threatened with restricted licences or refusals to renew their licence by CRT. At least 1,576 licence renewals have been threatened by restriction to

six months or less to date, according to figures released by CRT in 2016. This represents around one third of the community of Bargee Travellers on CRT waterways.

29. In a significant minority of cases, the threat to restrict licence renewal to six months or less has been overturned following challenges. In many of these cases, boat sightings taken by CRT were an inadequate record of the route travelled by the boater. The onus was however placed on the Bargee Traveller to provide evidence that the boat sighting record was wrong rather than CRT accepting that it is responsible for demonstrating that its sightings are correct. In some cases, Enforcement Officers are interpreting the distance requirement in their own way and are making decisions to restrict the licence renewals of Bargee Travellers who have travelled much greater distances than 15-20 miles or are penalising them for not travelling in a linear fashion because they have turned round to access essential services or simply because they wished to retrace their steps to meet up with friends or family or because of personal choice.
30. The distance and/or range required is not at all transparent and Bargee Travellers are being penalised for breaking spurious “rules” that are not being made clear to them. In many cases, those who have travelled very long distances have been penalised for not being sighted and have been accused of overstaying because of two sightings in the same place many months apart, when they have been on the move every day, as sightings are only taken of boats that are moored. In other cases, CRT has refused to overturn a restriction on the grounds that the Bargee Traveller's evidence was not sufficient. CRT has also stated that it does not take into account boat sightings in the last two months of a 12-month licence, but has recently been pressured into including an assessment of the last two months' sightings in the previous licence period instead.
31. In many cases, Bargee Travellers are being issued with 14-day overstaying notices when they have not been in the same place for 14 days. According to CRT's enforcement policy, three valid 14-day notices are enough to put the boat at risk of licence renewal restriction. This is not publicised well, and many Bargee Travellers do not realise that the onus is, unfairly, on them to challenge an incorrect reminder rather than on CRT to ensure that its enforcement process is operating correctly.
32. Some Bargee Travellers have been threatened with the restriction of a licence renewal following periods of illness or mechanical breakdown that have prevented them from travelling. The Bargee Traveller has been required to provide medical evidence. CRT has stated that it will not accept that a Bargee Traveller had a legitimate reason not to travel if they had not informed CRT of the illness or the mechanical breakdown at the time. This is despite the fact that the wording of Section 17(3)(c)(ii) is: “or such longer period as is reasonable in the circumstances” and does not set a requirement to either inform CRT or confer the power for CRT to grant permission for a longer stay. In cases of mechanical breakdown, CRT has taken upon itself to define what is reasonable, despite the statement in judgment in *Moore v British Waterways* [2013] EWCA Civ 73 that 'reasonable' cannot be determined in advance, and routinely penalises Bargee Travellers whose boats have mechanical problems by imposing an arbitrary time limit for the repairs to be completed and restricting or refusing the licence renewal as a result. Bargee Travellers are typically either working people on low incomes or retired on small pensions. They live on older, cheaper boats and it can take significant amounts of time to source, pay for and fit engine or other parts.
33. Other examples of CRT's abuse of its own process are: an Enforcement Officer stating that taking a temporary mooring for periods of two or three months is a breach of the Bargee

Traveller's licence terms and conditions, even though CRT itself sells hundreds of 5-month Winter Moorings to Bargee Travellers each winter; an Enforcement Officer stating that the Ashby Canal (a short 'dead end' waterway) does not count in calculating the range travelled; Enforcement Officers refusing to accept that journeys on other navigation authorities' waterways count towards the range travelled; Enforcement Officers routinely stating in writing that there is no appeal against the imposition of a restricted licence, despite the existence of the CRT complaints procedure and the Waterways Ombudsman; Enforcement Officers discouraging Bargee Travellers from making complaints; Enforcement Officers discouraging Bargee Travellers from seeking assistance from the NBTA on the grounds that "it will annoy us".

34. The distance/range required is not at all transparent and boaters are being penalised for breaking spurious "rules" that are not being made clear to them. The NBTA has many other examples of bullying and harassment by CRT staff as the result of its casework with individual boat dwellers. It is grossly unfair that the onus is on Bargee Travellers to take the time and make the effort to challenge incorrect allegations of overstaying or of not travelling the range that CRT claims is required. Many Bargee Travellers do not have the means to challenge these errors in CRT's own processes, and suffer the stress and fear of a restricted licence renewal as a result. In some cases, Bargee Travellers have lost their homes in situations where they were in the right in terms of CRT's own process, due to the way in which CRT's enforcement process operates.

Disabled boaters on CRT waterways and the Equality Act 2010

35. Following campaigning by the NBTA and other organisations, CRT appears to have accepted in principle that Bargee Travellers with relevant protected characteristics defined by the Equality Act 2010 have the right not to have the enforcement process applied to them in the same way as it is applied to those without such protected characteristics. These protected characteristics are chiefly disability, age and pregnancy/maternity. Before about 2015, a significant number of disabled or elderly Bargee Travellers who were unable to travel very much because of their disability were threatened, bullied and harassed by CRT and some lost their homes. In November 2014, CRT appointed a Welfare Officer as a result of the campaign.

See <https://you.38degrees.org.uk/petitions/stop-evicting-disabled-elderly-and-vulnerable-boat-dwellers>

36. In the cases of disabled or elderly Bargee Travellers that the NBTA has assisted, all those who requested reasonable adjustments to CRT's enforcement policy had their complaints resolved in their favour, and enforcement action against them dropped.
37. CRT's treatment of a pregnant Bargee Traveller was the subject of a complaint by the Equality and Human Rights Commission (EHRC) in 2016. CRT resolved the case in the Bargee Traveller's favour, but it appeared that the "equality adjustments" [sic] subsequently offered by CRT to other pregnant Bargee Travellers fell short of those offered in the case of the complaint taken up by EHRC. The EHRC met with CRT in November 2016 to raise its concerns regarding CRT's treatment of pregnant Bargee Travellers; CRT's treatment of Bargee Travellers with school age children, and CRT's failure to publicise the rights of all boaters with relevant protected characteristics not to have the enforcement procedure applied in the same way as it is applied to those without those protected characteristics. The EHRC is keeping CRT's compliance with the Equality Act 2010 under review.

See <http://www.bargee-traveller.org.uk/crt-makes-statement-after-equality-act-compliance->

School age Bargee Traveller children on CRT waterways

38. Head teachers have condemned CRT's enforcement policy as "inhumane" and are very concerned about the effect on the education and welfare of children. Some schools report having to deploy scarce resources to mitigate the effects of CRT's policy. In other schools, Bargee Traveller children are being disciplined for being late because of the extremely long distances parents have to drive or accompany them on public transport to and from school. To travel more than 20 miles twice a day, especially on public transport to take children to school is a financial, time and emotional burden on boat families that CRT is knowingly using to pressurise them to move off the waterways. In June 2016, Bargee Travellers, Wiltshire Council representatives, head teachers and Michelle Donelan MP met with CRT to press for limited distance requirements in term time for families with school age children, in return for greater movement during school holidays.

39. In November 2016 CRT made some limited concessions to Bargee Traveller families with school age children but at the time of writing it is not clear how far these concessions will assist families. The campaign for boat dweller children to have equal access to education continues.

See <http://www.bargee-traveller.org.uk/canal-river-trust-to-publish-illustrative-cruising-patterns-for-bargee-travellers-with-school-age-children/> and <https://you.38degrees.org.uk/petitions/boat-children-deserve-equal-access-to-education>

Accountability of CRT to Parliament

40. In the debate in the House of Commons regarding the transfer of British Waterways to CRT on 26th June 2012, Richard Benyon MP, then the Minister for Natural Environment and Fisheries, said: "The CRT will be accountable in the exercise of its statutory functions. Under the move to the CRT, accountability will continue to be strong, but we have to recognise that there will be differences. The CRT will be directly accountable to Parliament for the statutory functions conferred on it by Parliament".

41. The current routes of CRT accountability to Parliament, if they exist at all, are ineffective, despite the fact that CRT receives around £39 million each year in grant funding from DEFRA. Since the transfer in 2012, CRT has been unaccountable. When Bargee Travellers have raised concerns about CRT enforcement with their MPs, DEFRA has responded by telling the Bargee Travellers that they must raise the issue directly with CRT. They have done many times already, both individually and collectively, to no effect whatsoever.

Environment Agency (EA)

42. Most EA waterways are natural or canalised rivers and thus a Public Right of Navigation (see above) exists. On the River Thames, Section 79(2) of the 1932 Thames Conservancy Act the Public Right of Navigation on the non-tidal Thames entitles boats to moor, anchor or remain stationary for a "reasonable time in the ordinary course of pleasure navigation". This right is enjoyed by all boats regardless of whether they have a permanent mooring or not. The Public Right of Navigation includes the right to moor on the towpath as confirmed in Bye-law 54b of the Thames Navigation and General Bye-laws 1993.

43. The authority of Crown Estate Commissioners v Fairlie Yacht Slip Ltd [1978] Scot CS CSIH 3 confirms that while a Public Right of Navigation does not extend to the right to lay

permanent mooring structures, where a Public Right of Navigation exists, it includes the right to moor for temporary periods using equipment that is intended to be, and can conveniently be, taken onto and carried on board the vessel in the ordinary course of use.

44. Halsbury's Laws of England (5th edition, paragraph 691, states that the Public Right of Navigation includes the right to moor temporarily for a convenient time, including for repairs or because of adverse weather conditions, including on private land without payment to the landowner. This includes the right to fix temporary moorings in the water, to the foreshore or to ground. This applies except in a port or harbour.
45. Public quays exist throughout the Thames. On all land that the public has acquired the right of mooring or unloading, by whatever means, vessels may stay as long as they like, provided this right is exercised reasonably (J B Phear Esq: A Treatise on Rights of Water, Stevens and Norton 1859). Many public quays, such as that adjoining Reading Bridge in Reading, have been unlawfully removed.
46. At present Bargee Travellers on the Thames are facing punitive and unlawful measures against them that are having a very serious impact on their lives. These measures are being pursued by local authorities in respect of mooring on their riparian land, and by the EA in respect of its visitor moorings and lock cuts. Lock cuts are outside the main flow of the river and are places where boats can take refuge during flood conditions.
47. In late 2016 the EA contracted out management and introduced an unlawful and punitive charging regime at its visitor moorings and lock cuts, including a penalty of £100 per night for overstaying after 24 hours or not paying the daily charge.
48. This includes serving an enforcement letter on boats claiming, contrary to the public right of navigation, that boat owners are prohibited from using their boats on the Thames without a permanent mooring and that they cannot live on their boats unless they have a permanent mooring with residential planning consent. The letter further states that if boat owners without a permanent mooring overstay on visitor moorings and lock cuts due to Red Boards (ie flood conditions when the EA advises all boats not to navigate), they will be charged at the advertised rates whereas boats with permanent moorings will not be charged during flood conditions. The letter also threatens to suspend boat registration and remove boats without permanent moorings if they overstay.
49. These measures are unlawful because the Thames Conservancy Act 1932 Section 136 prescribes that no charge may be made for a reasonable period or for overnight mooring. Section 23 of the later 1972 Thames Conservancy Act removed the statutory obligation for charges for moorings owned by the EA "to be appointed by Byelaws". It has no effect on the statutory provision of Section 136 of the 1932 Act that "no charge shall be made for vessels tied up or moored at night or for a reasonable time when not at work unless the traffic of the Thames is thereby impeded."
50. Reading Borough Council has either restricted to one or two days or prohibited mooring altogether on much of the riparian land it owns or manages, with regular threats of eviction against Bargee Travellers and actual evictions. These measures mean that the places that Bargee Travellers can moor are far fewer and in some cases this means that their boats are far more at risk of sinking in flood conditions due to mooring being prohibited at some of the safer mooring sites.
51. The London Borough of Richmond upon Thames promulgated draconian byelaws in 2014

prohibiting mooring on its riparian land for periods of more than one hour in some locations and 24 hours in other locations. These byelaws are repugnant to the general law because they violate the Public Right of Navigation, which does not specify a time limit on mooring ancillary to navigation. The time limits in the Richmond byelaws also serve to endanger the lives and boats of all boaters who take refuge flood conditions, forcing them to move before it may be safe to do so.

52. Also in 2014-2015, the London Borough of Kingston upon Thames evicted a number of Bargee Travellers who were moored on its riparian land. The Boroughs of Windsor and Maidenhead, and Spelthorne, have also sought to purge the borough of Bargee Travellers. This is in addition to evictions of Bargee Travellers from land owned by Thames Water Utilities.

53. Following a campaign of vindictive multiple complaints from a small number of local residents who live near the River Thames or the Oxford Canal, Oxford City Council set up the Unlawfully Moored Boats Enforcement Group in 2010 consisting of the Council, the EA, CRT, Thames Valley Police and private land owners such as Oxford University. This led to greater mooring restrictions on the Thames in Oxford and to the proposed Public Space Protection Order, which would have criminalised mooring without seeking the consent of a land owner, contrary to the Public Right of Navigation, and would have criminalised the ordinary domestic activities of Bargee Travellers and boaters with permanent moorings such as using solid fuel stoves to heat their homes and generating electricity for lighting with the boat's engine or a generator. Following a campaign, the Public Space Protection Order has been abandoned by Oxford City Council but the threat to boat dwellers in Oxford still exists as the vindictive complainants have access to City Councillors and MPs.

See <https://oxfordboaters.wordpress.com/pspno/>

54. The River Thames Alliance, a private company, represents a further threat to Bargee Travellers. In 2015 it produced a report, the Thames Waterway Plan, that included in Section E the objectives “To ensure that the non-tidal River Thames remains as navigable as possible for commercial and recreational boats, that the rules around navigation are enforced... To develop a Thames-wide Moorings strategy that will resolve the problems created by unauthorised boats occupying recreational and public moorings”. The River Thames Alliance also initiated the All Party Parliamentary Group on the River Thames.

See http://www.riverusergroups.org.uk/groupfiles/viewfile.php?viewfile=thames-rugfile_1422720757_MS%20JS%20Final%20-%20310115%20-%201238.pdf&recid=42 pp22-25 and <http://www.thames-alliance.co.uk/index.html>

55. Bargee Travellers living on EA waterways in the Anglian region face similar measures, such as the mooring restrictions and fines imposed in 2015 by East Cambridgeshire District Council in Ely.

Conservators of the River Cam/ Cambridge City Council

56. Bargee Travellers on the River Cam are currently being faced with eviction following a U-turn by Cambridge City Council. Bargee Travellers have moored their boats at Riverside Dock in Cambridge since the 1990s. The ownership of the land was not known; in 2014 Cambridge City Council claimed ownership of the land and declared its intention to incorporate the Bargee Travellers moored at Riverside Dock in its Residential Mooring Licence Scheme.

57. In 2017, following a consultation, the Council declared its intention to evict all but seven of

these boats. It claims the remaining Bargee Travellers will be re-located, but it also claims that there is no further mooring space left in its Residential Mooring Licence Scheme. Despite boats having used Riverside Dock for mooring and unloading since at least the early twentieth century, the Council claims that it is not safe to moor boats there. In fact, until recently there were gates in the railings for access to the moorings, but the Council welded these gates shut to prevent pedestrians opening them and falling into the river. These Bargee Travellers have been described in the Council's consultation report of 6th March 2017, and also in the consultation document itself, as "illegal" despite there being no criminal matter at issue regarding the location where their boats are moored.

58. In 2016 the Council adopted a 'civil contract' enforcement process for its visitor moorings which has severely disadvantaged Bargee Travellers who are now faced with fines for exceeding mooring time limits, contrary to the Public Right of Navigation. These fines have been proposed at £50 for each 24-hour period, with powers to seize and forcibly sell the boat if they are not paid.
59. Cambridge City Council operates a Residential Mooring Licence Scheme in which terms and conditions are not enforced, leading to badly needed moorings being occupied by boats that are not lived on, contrary to the conditions of the scheme. At the same time it has evicted or threatened to evict two disabled Bargee Travellers and one family with school age children from its riparian land (not on Riverside Dock). A complaint is currently with the EHRC regarding one of these cases.
60. Bargee Travellers in Cambridge are being blamed by the Council for congestion on the river, despite there being only 120 boats moored on the River Cam within the city, compared to around 3,000 rowers who use the same stretch of the River Cam. The Council has recently announced its intention to increase these mooring fees by a significant amount, which will disadvantage those who are Residential Mooring Licence Holders.

Middle Level Commissioners

61. The Middle Levels are currently the only inland waterways where a licence or registration fee is not required. The Middle Level Commissioners receive funding of over £3 million each year from land owners for drainage and irrigation. The works that are funded are essential to prevent the land being flooded, and navigation is incidental to the drainage function. When the Fens were drained in the 17th century to provide agricultural land, it destroyed a way of life for local people who relied on boats as their traditional form of transportation between the hundreds of small islands. Accordingly, the Nene Navigation Act 1753 conferred rights on private citizens to use their boats on the new canals and drains as long as they did not transport goods or merchandise. The public have had the right of free navigation on the Old River Nene, which forms a large navigational section of the Middle Level, from before the Magna Carta of 1215 and indeed since Roman times.
62. In the Middle Level Bill of 2016, the Middle Level Commissioners propose to impose charges for navigation, despite not proposing to construct any additional facilities for boaters. The Bill also seeks sweeping powers to introduce byelaws including for the removal of boats. The Bill presents a significant threat to Bargee Travellers; it contains no protection for the homes of those who live on boats, and it opens the door for the Commissioners to exclude and criminalise Bargee Travellers. The NBTA, together with other boaters and organisations, has submitted a Petition to Parliament against this Bill.

See <http://services.parliament.uk/bills/2016-17/middlelevel.html>

Broads Authority

63. In 2010, the Broads Authority appointed an Enforcement Officer to “investigate the increasing number of people living on boats on unauthorised moorings”. Two locations were to be targeted, Thorpe Island and Haddiscoe Cut. This was despite Thorpe Island having a covenant permitting residential use. The ensuing planning battle was lost by the Broads Authority. The planning case lasted for around four years and caused extreme stress for the boat dwellers.

Access to essential facilities

64. Bargee Travellers frequently lack access to essential services such as potable water, sewage disposal and rubbish disposal, as the following examples show. In London, on CRT waterways, the situation is particularly bad. There are very few water taps, sewage or rubbish facilities, despite there being around 800 Bargee Travellers in the capital and in spite of a recommendation by the London Assembly Environment Committee in a report in 2013 that more facilities should be provided. The Middle Level Commissioners do not provide any facilities for boaters. The EA provide facilities at some locations on the Thames, but there are no boater facilities in Reading, either on the Thames or on the Kennet and Avon Canal.

Moorings

65. Permanent residential moorings that boat dwellers can legally live on are in very short supply. Where they exist, they are very expensive (up to £25,000 per year in London). The majority of marinas will turn you away if you live on your boat. Over 90% of permanent moorings are non-residential (“leisure moorings”). CRT knows that if boat dwellers live on leisure moorings they risk having planning enforcement action taken against them for unauthorised residential use. In London and the south there is a severe shortage of moorings and mooring fees are vastly inflated. Many of CRT's own directly managed moorings are priced using an auction system where the highest bidder wins. Some private moorings have waiting lists of 9 years and more.

66. Despite a consultation on the subject by the Office of the Deputy Prime Minister in 2006, there is no security of tenure for boat moorings so even if boat dwellers do take a mooring, they could be evicted at the whim of the marina owner. The NBTA is aware of a number of cases where mooring agreements have been terminated because the boat dweller is pregnant; because the boat dweller has made a complaint about a service or facility at the mooring; or simply because it has become known that they are living on their boat. The NBTA is also aware of a number of cases where boat dwellers have taken a mooring due to CRT's restriction or refusal to renew their licence without a permanent mooring, and CRT has continued enforcement action on the grounds that it is “not a valid home mooring”. This is despite the fact that most of the rights granted to land owners on the artificially constructed canals to build and use wharves, quays and places for boats to “lie, turn in and pass each other”, without payment to the navigation authority, in the original Enabling Acts have not been repealed, and despite the fact that on rivers, the riparian owner owns the bed of the river to the centre and thus can do what they choose with their riverside land, including having boats moored there, subject to planning controls.

Housing and Planning Act 2016

67. Section 124 of the Housing and Planning Act 2016 places a duty upon local authorities to “

consider the needs of people residing in or resorting to their district with respect to the provision of ... (b)places on inland waterways where houseboats can be moored”. This means that Bargee Travellers must now be included in the accommodation needs assessments that local authorities have a duty to carry out. In March 2016 the DCLG published *Draft guidance to local housing authorities on the periodical review of housing needs: Caravans and Houseboats*.

68. However only a handful of local authorities have carried out these assessments in relation to Bargee Travellers and boat dwellers. Many local authorities, as detailed above, are violating the Act in relation to their duties to Bargee Travellers. Some have stated that they have not carried out any needs assessments because the DCLG has not finalised its draft Guidance.

Access to welfare benefits

69. In many cases where Bargee Travellers attempt to claim Housing Benefit for the cost of the boat licence without a mooring fee, they are told that they are not eligible, despite case law stating that the boat licence on its own can be covered by Housing Benefit (see CH 0844 2002, CH 0318 2005, and CH 4250 2006). Reasons given for rejecting their application include “not permanently resident in the district”; “the boat is an asset that takes you over the capital limit”; “you don't live at the contact address you've given” and “we can't find your address on our system”. These are all spurious reasons. To date, the NBTA is aware of only one local authority that has awarded Housing Benefit to cover the costs of the compulsory third party insurance and compulsory boat safety examination that are required in order to licence a boat. One local authority paid these elements as a Discretionary Housing Payment. Another rejected an application for a Discretionary Housing Payment to cover the insurance and boat safety examination on the grounds that the boat was owned by the claimant and thus it was not an eligible payment, despite the fact that it is a statutory requirement without which the Bargee Traveller cannot license their boat and can therefore be evicted.
70. It is notable that Bargee Travellers who attempt to claim Housing benefit through the Jobcentre almost always have their claim rejected; the NBTA advises them to claim direct to the local authority. In some cases a claim for Housing Benefit has triggered a demand for Council tax, which Bargee Travellers are not eligible to pay because a boat on its own without a mooring is not domestic property.
71. It is not yet clear whether Bargee Travellers are experiencing the same problems in Universal Credit Full Service areas; apart from in the Full Service areas, Bargee Travellers have not been required to claim Universal Credit as is anyone who does not live at the address given on their application. So far, most Bargee Travellers who need to claim out of work benefits have claimed Jobseekers Allowance and Housing Benefit.
72. Some Bargee Travellers who claim Working Tax Credit have been subjected to “undisclosed partner” investigations by HMRC or Concentrix, because the address that they use is the home of a relative or a friend. It has not been easy for them to prove that they live on a boat, and some have had their Tax Credit payments stopped for some considerable time as a result.
73. Bargee Travellers face similar difficulties claiming the Winter Fuel Allowance where this is not paid automatically.

Access to health services

74. The NBTA receives regular requests for assistance from Bargee Travellers who are having difficulty registering with a GP. Most GP surgeries are unaware that they can register a patient without a fixed address by using the surgery's own address. This is stated in Paragraph 12 on page 9 of the NHS publication *Who pays? Determining responsibility for payments to providers: Rules and guidance for clinical commissioning groups* (September 2013). Some Bargee Travellers have been told they are not in the catchment area after a postcode has been demanded by the surgery and they have given the postcode of their 'care of' address, which may be outside the surgery's area even though they are present within the area. The issue of Bargee Travellers access to health services and their health needs has been covered extensively in *Bath and North East Somerset Gypsy, Traveller, Boater, Showman and Roma Health Survey 2012-2013*, prepared for Bath and North East Somerset Health Authority, by Professor Margaret Greenfields with Liz Lowe.

Access to voter registration

75. People without a residential address can register to vote by declaring a local connection, but this is not known by all staff in electoral registration offices. The NBTA is aware of a case where a Bargee Traveller was accused and investigated for suspected electoral fraud as the result of attempting to register to vote by declaring a local connection. For Bargee Travellers who are either forced to or who choose to travel long distances, they may be excluded from voting because they do not have a local connection to any one place.

Access to postal mail

76. All Bargee Travellers lack a residential postal address. They may have a 'care of' postal address with a relative outside the area in which they live, or they may use Royal Mail Poste Restante, Call and Collect at a Royal Mail Delivery Office, an accommodation address or a specialist boat mail company. Not all Post Offices and Royal Mail Delivery Offices offer these services. Lack of an address affects their ability to access health care, education and welfare benefits although they are entitled to all of these even without an address at all.

Financial exclusion

77. Without a residential address, Bargee Travellers have great difficulty in opening bank accounts and proving their identity for such purposes. If they are truthful about the address they use in relation to the location of their vehicle, this excludes them from motor insurance and if they own a vehicle they may be unable to insure it. They may also be unable to prove their identity for other purposes such as job applications. Bargee Travellers are disadvantaged regarding credit checks because they do not have a residential address and thus no credit history associated with them as individuals. This impacts on their ability to obtain loans and obtain mobile phone and other contracts.

Digital exclusion

78. Bargee Travellers rely on mobile broadband to access the internet. Internet access is now regarded as an essential service by the Government. mobile broadband is inherently unreliable and offers lower performance compared to terrestrial (ADSL) broadband. The quality of the signal varies considerably depending on the location. This is commonly referred to by Ofcom as "not-spots". There are still many areas where mobile broadband is difficult to access or is not available. There are also locations where the base station equipment provided still has not been upgraded from 2G to 3G, let alone 4G, which is most

prevalent in rural areas. In addition, the speed of the connection is at best around 25% of that of terrestrial broadband, making it difficult to use. Therefore the price per Mbit/s greater. The prevalence of “not-spots” for mobile broadband was commenced by Ofcom in September 2016. However, many Bargee Travellers have no means to access the internet, especially those who are older and on lower incomes, although most do have mobile phones. Many Bargee Travellers are excluded from mobile phone contracts because they have no credit history, making it harder for them to afford smart phones which are far more expensive without a contract. If these Bargee Travellers need to use the internet, they have to rely on libraries.

Cross-boundary issues

79. Bargee Travellers frequently move or are forced to move between local authority areas and therefore there are cross-boundary issues in respect of health services, social services and other geographically defined services that require co-operation between authorities. Many have lost access to the services that they need, especially health care, as a result.

Bargee Travellers who have a leisure mooring.

80. The needs of Bargee Travellers who have a leisure mooring will be consistent with the needs of anyone who does not live in bricks and mortar but is largely static, but does not necessarily have a residential or a postal address or only has a postal address outside the area in which they live. This will affect their ability to access health care, education and welfare benefits although they are entitled to all of these even without an address at all.
81. Most people who live on their boats on non-residential moorings will not want to be identified for fear of attracting planning enforcement action. It will be very difficult for local authorities therefore to reach these boat dwellers and any assessment of their needs must be handled sensitively and in complete confidence, with the assurance that giving information to the local authority will not result in planning enforcement action. If any boat dwellers' homes are moored to land that is within the curtilage of a property they may not need planning consent to live on their boats. In other situations they may need planning consent. The primary need of these boat dwellers is for planning consent for the residential use of their mooring.
82. Many boat dwellers who have leisure moorings do not remain permanently on their moorings, either because they wish to go boating frequently; because they are not using their mooring as their residence because of the risk of planning enforcement, or because they have been forced by CRT enforcement to take a mooring and the mooring location is not convenient or congenial to them. This especially applies to boat dwellers who have been forced to take a mooring in a marina because they cannot find one anywhere else. Many marinas have very strict rules, such as not hanging out washing, or not allowing children. Some marinas have rules about how many nights per week a boat owner may sleep on the boat. Many boat dwellers do not enjoy being cooped up in a marina next to hundreds of other boats.
83. There is no security of tenure for boat moorings, which means that mooring operators can terminate a mooring agreement on a whim with a maximum notice period of four weeks. Boat dwellers who make complaints about the mooring or the services provided, or who are found to be living permanently on their boats, often have their mooring agreements terminated. Mooring agreements can also be terminated to make way for property or leisure developments, which is a regular occurrence on the inland waterways as waterside locations

are a factor that increases property prices. Thousands of moorings have been lost to property developments by CRT and private developers in the past 15 years and many more are under threat.

84. The planning use class for residential boat moorings is the same as that for bricks and mortar houses, regardless of the fact that the impact of new residential boat moorings is about 10% of the impact of new houses. The planning use class of residential boat moorings needs to be changed to reflect the greatly reduced impact. The creation of new residential boat moorings attracts the New Homes Bonus for local authorities. Local authorities need to recognise that the impact of a residential boat mooring is very much less than a house, and that the impact of residential moorings is very similar to that of leisure moorings. Local authorities should also be lobbying Government to change the planning use class of residential boat moorings to separate them from the planning use class of houses.

Evicted Bargee Travellers

85. The NBTA is aware of a number of Bargee Travellers who have been forced back into bricks and mortar after being threatened with or actually having their boats seized and removed by CRT and other navigation or local authorities. In most such cases their standard of accommodation has worsened as a result mainly because what they can afford on land is far inferior to owning their boat on the waterways. In many cases older single people (35+) have been forced to revert to a single room in a shared house when previously they had their own self contained home (boat).
86. Many Bargee Travellers who have been forced to move to bricks and mortar by the threat of or actual eviction from the waterways do not feel happy or secure. Reasons include the unaffordability of houses and flats; separation from the strong community of liveaboard boaters on the waterways; missing the feeling of being on water; being forced to move from a quiet area to a place where there is more crime or a greater fear of crime; feeling hemmed in and claustrophobic.
87. If a boat dweller is being rehoused by a local authority they will never be offered new accommodation on water or a mooring for their boat. This means that in all cases of rehousing Bargee Travellers will have been forced to give up their own home (boat) in which they were previously much more independent including free from the need to claim welfare benefits to cover rent, especially if they were in work. Local authorities have never to our knowledge offered moorings as rehousing even where the local authority is a riparian land owner.
88. CRT appears to have adopted a policy since 2015 of pursuing Bargee Travellers whose boat has been seized for the alleged outstanding costs of removing the boat. This has occurred in some cases up to four years after the boat has been seized. This has been the case even where CRT has sold a boat that it has seized that was considerably more valuable than the amount of the alleged debt. In such cases, CRT is exceeding its powers granted in Sections 8 (3) and 8 (4) of the British Waterways Act 1983. This policy appears to be excessively vindictive, given that CRT normally claims the costs of removing a boat are in the region of £5,000 and that the value of the majority of boats is more than £5,000. This appears to be an extremely vindictive move against people who have already lost their home. When a boat is seized, the owner has the right under to reclaim it on payment of CRT's costs.

Recommendations

89. The Government must keep CRT in check. There must be accountability to Parliament, and ultimately the people, for whom the charity holds the waterways in trust.
90. No boater on CRT waterways who complies with the limit of 14 days in one place should have their boat threatened with removal by CRT.
91. There should be no reduction in 14-day mooring space on CRT waterways.
92. CRT should abandon its unlawful enforcement policy instigated in May 2015, and abandon its interpretation of Section 17 (3) (c) (ii) of the British Waterways Act 1995. The legislation is widely drawn and CRT should use it to welcome Bargee Travellers onto its waterways on the basis that they are the lifeblood of boating, they are the community that keeps the waterways alive all year round and they are source of bringing younger people into boating at a time when the population of leisure boat owners is ageing.
93. Section 43 (3) of the 1962 Transport Act should be declared incompatible with Articles 6 and 8 ECHR.
94. Sections 13 (2) (3) and (4) of the 1971 British Waterways Act should be repealed.
95. Sections 8 (1) (2) (3) and (4) of the 1983 British Waterways Act should be repealed.
96. Navigation authorities and riparian local authorities should be banned from bringing injunctions removing boat owners from their waterways for life.
97. Navigation authorities and local authorities powers to make subordinate legislation such as byelaws or Public Space Protection Orders should not prohibit the mooring of boats for periods of up to twelve weeks in any one place.
98. Any current and future primary, secondary or subordinate legislation, including Public Space Protection Orders, that has the effect of criminalising the ordinary domestic behaviour of boat dwellers in heating their homes with solid fuel stoves and generating electricity for lighting by running an engine or generator, should be declared incompatible with Article 8 ECHR.
99. The EA should abandon its unlawful attempt to pressurise Bargee Travellers to take permanent moorings under the threats of being charged for mooring in flood conditions when boat owners with moorings are not charged for this; having their river registration suspended and having their boat seized.
100. The DCLG should finalise its *Draft guidance to local housing authorities on the periodical review of housing needs: Caravans and Houseboats* regarding Section 124 of the Housing and Planning Act 2016.
101. Local authorities must include Bargee Travellers in accommodation needs assessments, in line with Section 124 of the Housing and Planning Act 2016. Where local authorities operate fixed permanent moorings or issue residential mooring licences, these should be allocated according to need.
102. Pursuant to their duties under Section 124 of the Housing and Planning Act 2016, local authorities should carry out enquiries into what facilities Bargee Travellers need and provide facilities where these are lacking. Navigation authorities sometimes provides water taps, chemical toilet sewage disposal, sewage tank pump-outs, recycling and refuse disposal facilities but provision

is patchy and better in some regions than others. Local authorities can fill this gap by providing facilities in places where they are lacking.

103. The planning use class of boat moorings should be changed so that it reflects their minimal impact compared to bricks and mortar housing.

104. Riparian local authorities should facilitate Bargee Travellers mooring on their riparian land for temporary periods of at least twelve weeks.

105. Evicted Bargee Travellers should be rehoused on boat moorings wherever possible, especially where the local authority is a riparian land owner.

106. Local authorities who deal with Housing Benefit claims should provide training to all their staff regarding the rights of Bargee Travellers to Housing Benefit.

107. Housing Benefit regulations should be amended to include the housing costs of boat dwellers including boat licence or registration fees; compulsory third party insurance; compulsory boat safety examinations and mooring fees under Regulations 12 (1) (d) or 12 (1) (f) of Statutory Instrument 2007 no 2870.

108. The DWP should ensure that Universal Credit covers the housing costs of boat dwellers including boat licence or registration fees; compulsory third party insurance; compulsory boat safety examinations and mooring fees.

109. The NHS should educate its staff regarding GP registration as a permanent patient without a fixed address, and the issues regarding 'care of' addresses that are outside the surgery's catchment area. The NHS should also facilitate 'joined up' health care so that Bargee Travellers can continue to receive the health care they need regardless of how far they travel.

110. Electoral registration officers and their staff should receive training that explains the right to register to vote by declaring a local connection.

111. Royal Mail Delivery Offices and the Post Office should be required to offer Poste Restante and/or Call and Collect at all their offices, regardless of the status of the office, for all persons without a residential address.

112. Any further investigation into digital exclusion by Ofcom or any other body should include the needs and experiences of those who rely on mobile broadband.

National Bargee Travellers Association
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