

NATIONAL BARGEE TRAVELLERS ASSOCIATION

Evidence to Joint Parliamentary Committee on Human Rights Inquiry into Defending Human Rights

Introduction

1. The National Bargee Travellers Association (NBTA) is a volunteer organisation formed in 2009 that campaigns and provides advice for Bargee Travellers: 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 Bargee Travellers. There are no accurate statistics for the number of Bargee Travellers (or boat dwellers generally) in the UK. 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 Bargee Travellers/ boat dwellers live in coastal harbours and estuaries controlled by harbour authorities.

3. Bargee Travellers have few rights in law and these are frequently violated by navigation authorities; local authority riparian landowners; and central or local government departments. Despite Bargee Travellers' rights to occupy and moor their homes being derived from provisions such as the Public Right of Navigation on navigable natural and canalised rivers and/or the British Waterways Act 1995, the following rights are frequently violated with few or no effective routes of redress:

- European Convention on Human Rights: Article 6; Article 8; Protocol 1 Article 1; and Protocol 1 Article 2.
- United Nations Convention on the Rights of the Child: Article 28 the right to education
- European Social Charter: Part 2 Article 1 the right to work
- United Nations Convention on the Rights of Persons with Disabilities: Article 19 the right to live in the community and to choose their place of residence; no obligation to live in a particular living arrangement, and entitlement to support to facilitate living and inclusion in the community.

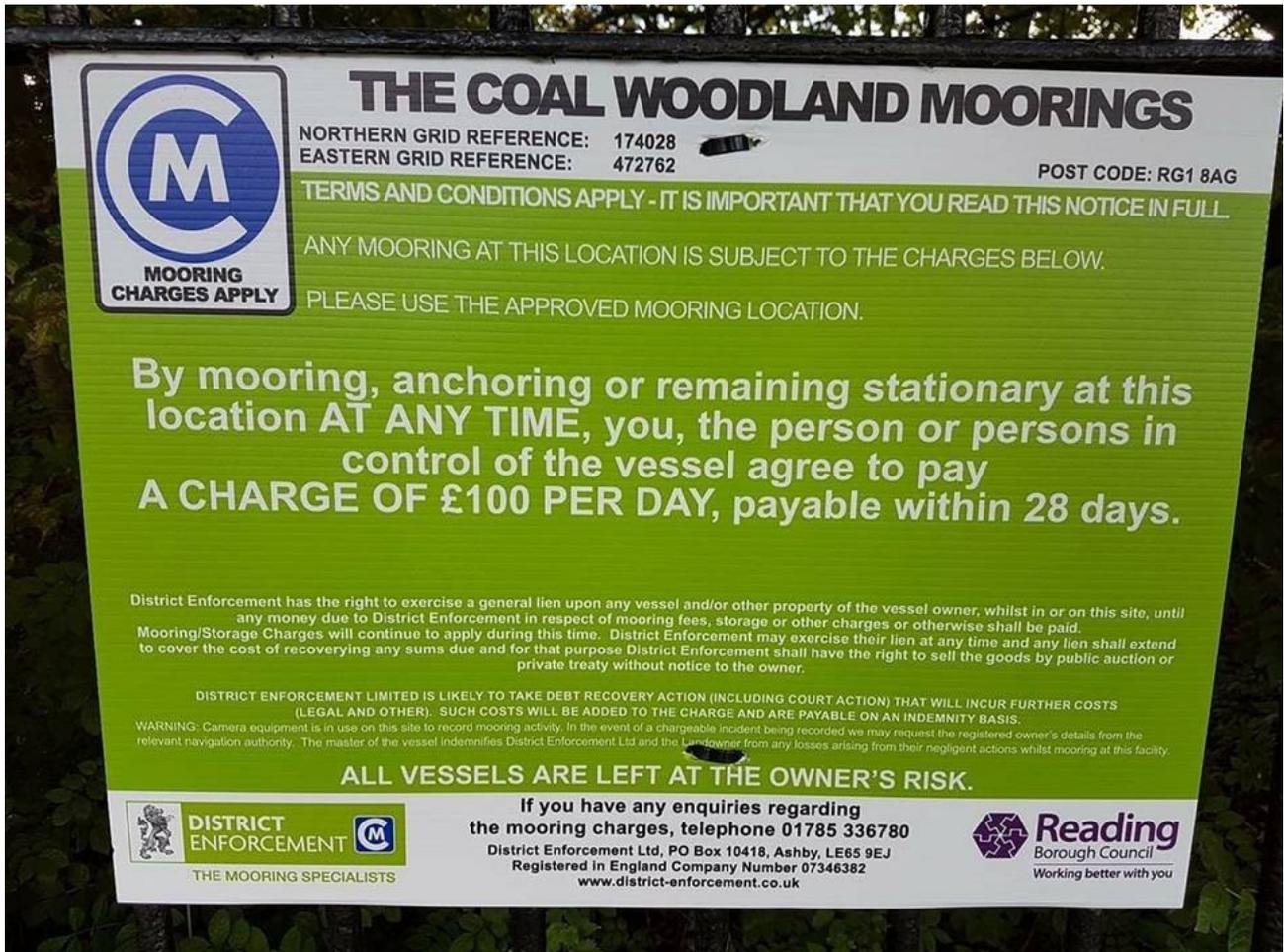
European Convention on Human Rights: Article 6; Article 8; Protocol 1 Article 1; and Protocol 1 Article 2.

Article 6: threats of immediate seizure of boats by District Enforcement and other civil enforcement companies contracted to riparian authorities

4. Riparian local authorities and navigation authorities on the River Thames and other rivers have since 2016 attempted to enforce claims for mooring fees on the entire extent of the riverside land that they own. These fees are in the region of £100 per day. Enforcement includes threats of the immediate seizure and sale of the boat if the fee is unpaid, imposed by both local and navigation authorities and implemented both directly and by subcontractors such as District Enforcement. This enforcement policy has been described as “a contractual approach which sets out ‘licence’ terms that are a contract for the non-exclusive use of a space for a period of time” and “a regulation policy using contract law principles” and a “contract law model”. It is in force to our knowledge on Environment Agency-owned land on the Thames and on local authority-owned land in Reading; Oxford; Ely; Spelthorne; and Cambridge.

5. These fees are being enforced in spite of the Public Right of Navigation. 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. These rights are confirmed by case law such as *Crown Estate Commissioners v Fairlie Yacht Slip Ltd* [1978] Scot CS CSIH 3. On the River Thames, these rights are codified in Section 79(2) of the 1932 Thames Conservancy Act and By-law 54b of the Thames Navigation and General Bye-laws 1993. The fees are also being enforced regardless of whether the boat dwellers have children living with them; have protected characteristics under the Equality Act 2010; or have other welfare needs.

6. The immediate seizure of boats that are lived on, without a court hearing to determine the proportionality of depriving the boat dweller of their home, would be in breach of the Article 6 and Article 8 rights of Bargee Travellers. Case law such as *Connors v United Kingdom* [2004] ECtHR 66746 01 confirms this. In the case of boat owners who do not live aboard, their Protocol 1 Article 1 rights are being violated. Once a boat is seized, especially if it is then sold or destroyed, in the experience of the NBTA there is no effective remedy for the boat owner. The seizing authority is likely to demand a sum in the region of £5,000 for the return of the boat to the owner. In cases where the boat has been sold or destroyed, seizing authorities have been known to pursue the now homeless boat dweller through the County Court for the cost of removing the boat. Typically, Bargee Travellers who have been made homeless are on the lowest of incomes.



A photograph of the notices alleging that the boater has entered into a contract to pay the fees.

Article 8 and Protocol 1 Article 1: Canal & River Trust 2015 policy regarding boats without a permanent mooring

7. 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:

(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.

8. 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. *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 and violate the Article 8 and Protocol 1 Article 1 rights of Bargee Travellers.

9. 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.

10. 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". "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. References to "15-20 miles" have now been removed from the CRT web site and communications to boaters on this issue now only refer to 20 miles.

11. The effect of this change in policy was that Bargee 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.

12. In 2004 British Waterways, the predecessor to CRT, published the *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.

13. 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.

14. 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'.

15. 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 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 that would have prevented Bargee Travellers going back to places they had visited within a given period.

16. In order to enforce the unlawful 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 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. Those who accept the restricted licence are expected by CRT to cover a 20 mile range within the period of the restricted licence, in other words to travel the increased distance in half 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.

17. 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.

18. The majority of the cases dealt with by the National Bargee 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 had been threatened by restriction to six months or less in the first year of the policy's operation. This represents around one third of the community of Bargee Travellers on CRT waterways.

19. 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 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, which is not prohibited in law.

20. 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 in spite of the wording of Section 17(3)(c)(ii) which states: “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 *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.

21. 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.

Article 8, proportionality and Judicial Review

22. The enforcement policy outlined above is a systematic violation of the Article 8 and Protocol 1 Article 1 rights of Bargee Travellers. Many have given up their boat homes; uprooted their lives and moved to the other 20% of the UK's inland waterways; or ignorant of their rights, have had their boats seized without being able to defend themselves in court. However there have been no opportunities in three years of the policy's operation to enforce these rights in challenge to the policy. Most Bargee Travellers who are forced to take a six month licence, do so because the alternative is that the boat becomes unlicensed and subject to removal. A minority of Bargee Travellers successfully argue that CRT's boat sighting data was incorrect and regain a 12 month licence following a complaint. If the enforcement progresses to the stage of a claim form being issued and they are legally aided, they will be advised to accept a six month licence due to the rules of Legal Aid. A decision by CRT to impose a six month licence is unlikely to gain permission for Judicial Review given how high the bar for Judicial Review is set, because the boater could have accepted the six month licence rather than leaving the boat unlicensed. A successful test case would be arduous in the extreme, given the inequality of arms and the propensity of the County Courts to uphold the arguments of authorities in preference to the arguments of people whom the authorities successfully portray as 'freeloaders', 'licence evaders' or lawbreakers. CRT normally use a QC when claims against boaters are defended, even in the County Court.

23. An earlier attempt in 2012 to bring a Judicial Review of CRT's *Guidance for Boaters Without a Home Mooring* was discontinued by the claimant when the Judge stated that the outcome would not assist either party due to the fact that the claimant's case was theoretical with no live enforcement action and no factual matrix upon which to make a judgment. See *R (Brown) v Canal & River Trust* [2014] EWHC 588 (Admin).

24. The only encouraging development is that of *Canal & River Trust v Matthew Jones* [2017] EWCA Civ 135 in which the Court of Appeal found that Matthew Jones could present his Article 8 defence at trial in the County Court and CRT's argument based on analogy with public housing authorities was rejected. The Court of Appeal has now given the green light to Article 8 defences in boat dweller cases where the alleged non-compliance is not clear cut, such as the situations outlined above regarding Section 17(3)(c)(ii) of the British Waterways Act 1995.

25. However the contention that CRT should have used a less intrusive remedy for non-

compliance, rather than seizure and removal of a boat, was rejected by the judge in *Ravenscroft v CRT* [2017] EWHC 1874 (Ch). The case concerned Mr Ravenscroft's Protocol 1 Article 1 rights. He did not live aboard his boat.

European Convention on Human Rights: Protocol 1 Article 2; and United Nations Convention on the Rights of the Child: Article 28.

CRT 2015 policy regarding school age Bargee Traveller children

26. Head teachers have condemned CRT's 2015 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.

27. Although in November 2016 CRT wrote to Ms Donelan implying some concessions to Bargee Traveller families with school age children, these concessions have never been directly offered to Bargee Traveller families themselves and CRT's October 2017 Equality Policy for Customer Service Delivery states that with regard to boaters without a home mooring who have school-aged children, "We have considered whether there needs to be a special adjustment to our usual requirements in these cases, however we do still expect these boaters to comply with our Guidance". Subsequently, conflicting statements on this issue have been made by CRT.

28. A complaint by NBTA in February 2018 to the Equality and Human Rights Commission regarding the CRT Equality Policy for Customer Service Delivery in respect of school age children was not upheld. CRT itself reviewed its complaints procedure in August 2017 and the procedure now states in paragraph 3.10 regarding complaints that relate to policy that "The Trust's policies are not an acceptable basis for a customer complaint. Customers are still able to provide feedback about our policies but this will not be treated in accordance with this complaints procedure". At present there appears to be no effective route to enforce the rights of Bargee Traveller children to equal access to education.

European Convention on Human Rights: Article 8; and European Social Charter: Part 2 Article 1.

Effect of CRT 2015 policy on the right to work and ability to retain employment

29. Although 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 [using a boat licensed without a permanent mooring]" 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".

See <https://canalrivertrust.org.uk/enjoy-the-waterways/boating/mooring> and

<https://canalrivertrust.org.uk/enjoy-the-waterways/licensing-your-boat/licensing-faqs>

30. In practice, CRT's 2015 enforcement policy interferes with the right to work by forcing Bargee Travellers to travel distances that may mean that they are unable to make the daily journey to a fixed place of employment or even to varying places of self-employment. As a consequence, the policy violates the Article 8 rights of Bargee Travellers insofar as the ability to earn a living is the means to maintain one's occupation of one's home. There is no effective route for Bargee Travellers to enforce their right to work in this situation. CRT maintains that a boat licensed without a permanent mooring is not meant to be used as a home by a person who has ties to a fixed place such as a place of employment. The NBTA believes that CRT is knowingly pressurising employed Bargee Travellers through its 2015 policy to force them to move off the waterways.

United Nations Convention on the Rights of Persons with Disabilities: Article 19.

Local authority refusal to provide domiciliary care to boat dwellers.

31. Boat dwellers, whether or not they have a permanent mooring for their home, are being treated in a way that breaches their rights under Article 19 of the United Nations Convention on the Rights of Persons with Disabilities. If elderly or disabled boat dwellers need domiciliary care, local authorities will not normally provide this unless they move off their boat, out of their community into bricks and mortar. This also indirectly violates their Article 8 rights. To the NBTA's knowledge, no boat dweller has challenged this refusal through the courts; it is difficult to envisage a legal challenge being possible in a situation where the need for domiciliary care is urgent, as it usually is.

Accountability of CRT to Parliament

32. 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".

33. 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 so many times already, both individually and collectively, with no effect whatsoever.

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