

NATIONAL BARGEE TRAVELLERS ASSOCIATION

EVIDENCE FOR LONDON ASSEMBLY INVESTIGATION INTO WATERWAY MOORINGS

1. Introduction

1.1 The National Bargee 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. This consultation response addresses issues regarding the Canal & River Trust waterways within London.

2. Issues around mooring rules and enforcement - mooring rights, rules and time limits, and how they are administered and enforced; also the extent and pattern of breaches of overstaying or other breaches of mooring rules.

2.1 Boat dwellers without permanent moorings on Canal & River Trust (CRT) waterways

Boat dwellers are entitled to live on their boats and cruise the CRT waterways without a permanent mooring by virtue of s. 17(3)(c)(ii) of the 1995 British Waterways Act. They are not permitted to stay in one place for more than 14 continuous days unless a longer stay is reasonable in the circumstances. The law does not specify any particular cruising pattern, minimum distance or prohibition on returning to the same place. They are frequently referred to as 'boaters without home moorings' or 'continuous cruisers'.

In December 2012 there were 4,498 boats on CRT waterways licensed without a permanent mooring out of a total of 33,112 licensed boats. There are no verifiable figures but the NBTA estimates that around 60% to 70% of boats without permanent moorings are people's homes, amounting to between 2,698 and 3,148 on the whole of the CRT's 2,000 miles of waterways. At an average boat length of 47 feet, if all of these boats were placed end to end they would occupy at most 28.2 miles of waterway. Estimates based on small-scale surveys carried out by boaters' groups show that each liveaboard boat is occupied by an average of 2.1 adults and children. The total number of licensed boats on CRT waterways is in the region of 35,000. Therefore boat dwellers without permanent moorings own less than 10% of the boats on CRT waterways. This begs the question why a minority - 3,148 boats out of 33,112 - are being labelled as such a problem.

2.2 Section 17(3) of the 1995 British Waterways Act

s. 17(3) of this Act states:

- (3) Notwithstanding anything in any enactment but subject to subsection (7) below, the Board may refuse a relevant consent in respect of any vessel unless—
- (a) the applicant for the relevant consent satisfies the Board that the vessel complies with the standards applicable to that vessel;
 - (b) an insurance policy is in force in respect of the vessel and a copy of the policy, or evidence that it exists and is in force, has been produced to the Board; and
 - (c) either-
 - (i) the Board are satisfied that a mooring or other place where the vessel can reasonably be kept and may lawfully be left will be available for the vessel, whether on an inland

waterway or elsewhere; or

(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.

In the years since 2004, the enforcement of s. 17(3)(c)(ii) of the 1995 British Waterways Act has become increasingly restrictive and draconian, and increasingly different from the enforcement and test for compliance originally proposed by BW and intended by Parliament. This has had an adverse impact on the lives of boat dwellers without permanent moorings, putting them in constant fear of losing their homes and compromising their ability to find and maintain employment, send their children to school, access health care, maintain access to postal mail, and maintain family and social relationships with people in the settled community, especially with non-resident children.

Before 1995, British Waterways (BW) had sought legislation that would compel every boat to have a mooring, with criminal penalties at the highest level for anyone caught living on their boat without a residential mooring and a houseboat certificate. Parliament considered that BW's original proposals were draconian and excessive and so BW was forced to agree to a clause permitting boat owners to use and live on their boats on its waterways without a permanent or "home" mooring. According to a boat dweller who was closely involved with the passage of the Bill through Parliament as an adviser, BW did nothing in the years immediately after 1995 and then began to look for ways to circumvent this provision around 2001.

2.3 Unlawful enforcement and erosion of the right to live on a boat without a permanent mooring by CRT.

To assume that any problems that boat dwellers encounter as a result of the enforcement of s.17(3)(c)(ii) by CRT will be solved by providing them with permanent moorings that they can legally live on will not address the real problem which is that CRT (and BW before it) is restricting and eroding the right of boat licence holders to use and live on their boats without a home mooring. They need assistance from the London Assembly to uphold and defend this right and they need protection against unlawful enforcement that could result in the loss of their homes.

The right to use and live on your boat without a home mooring is enshrined in s.17(3)(c)(ii) of the 1995 British Waterways Act. This entitles boat licence holders to stay for up to 14 continuous days in any one place, or longer if it is reasonable in the circumstances. It does not stipulate any specific cruising pattern, minimum distance or 'no return within' period beyond this. It does not require boats to be on a 'progressive journey'. It does not prohibit boats from remaining within a specific geographic area. It merely requires boats to be used 'bona fide for navigation'.

Parliament intended that the test for whether boats are complying with s.17(3)(c)(ii) of the 1995 Act should be whether the boat has stayed for longer than 14 continuous days in one place without a longer stay being reasonable in the circumstances. Parliament specifically rejected any requirement for a 'no return within' period or a 'progressive journey'. This is recorded in the Minutes of Evidence of the Select Committees that scrutinised the British Waterways Bill between 1991 and 1994. These minutes are available for public inspection in the Parliamentary Archives and in the House of Lords Select Committee Special Report on the British Waterways Bill (1991).

The rights of boaters without home moorings are being eroded by a succession of increasingly draconian restrictions. They are expected to comply with movement requirements and pay daily overstaying charges that go beyond what the law requires of them and that are at odds with what Parliament intended. In particular, CRT enforcement is focused on the distance that boats without

home moorings travel, regardless of the fact that this is not the correct test for compliance with s. 17(3)(c)(ii). If they do not comply, they face having their homes seized by the charity, losing not just their homes but the only asset that they own.

Boat dwellers without permanent moorings are subject to intensive surveillance of their homes by CRT to track their boat movements. This is a disproportionate effort and expense compared to the numbers of boats without permanent moorings. Instead of using the test for compliance with the law that Parliament intended, CRT tracks the distance that boats without home moorings travel, and threatens to terminate boat licences if it considers that the boat has not travelled far enough. This means that boaters are being forced to travel in a way that makes it difficult to get to work and for children to get to school. This puts them in a position where they can be forced to choose between keeping their homes, or losing or giving up their homes in order to stay in their jobs and maintain their children's education. Sometimes they will be pressurised by CRT to take a mooring that they do not want, do not legally need, cannot legally live on and cannot necessarily afford. In London the demand for moorings exceeds the supply, which means that even if boat dwellers accept that they are forced to take a mooring, they have great difficulty finding one.

Focusing enforcement of s.17(3)(c)(ii) on the distance that boats without home moorings travel does not reduce overstaying on moorings, indeed boats with moorings are just as likely to overstay according to a 2011 study by the National Association of Boat Owners (NABO). If CRT was to enforce s.17(3)(c)(ii) in the way that Parliament intended, by taking action against boats that stay longer than 14 continuous days in any one place without that longer stay being reasonable, this would eliminate overstaying by all but a small minority, leaving a manageable caseload for the enforcement team. However, CRT and BW officers have stated publicly that enforcing the 14-day rule does not produce an income and therefore it is not a priority.

CRT publicly misrepresents boat dwellers without home moorings as exploiting a loophole in the law and having a 'free ride'. The reality is that they are legitimate users of the waterways, and that boaters who pay extra for moorings receive extra services and benefits in return.

2.4 CRT's Guidance for Boaters Without a Home Mooring

In 2004 British Waterways published *Mooring Guidance for Continuous Cruisers*. This set movement requirements such as a 'progressive journey' that were above and beyond what was set out in s.17(3)(c)(ii) of the 1995 British Waterways Act. It was adopted into the boat licence terms and conditions in 2008 without any consultation with waterway users. Following a case in Bristol County Court in 2011, BW was forced to modify this to make it less stringent, but it still sets movement requirements that go beyond the 1995 Act. It was republished in October 2011 as *Guidance for Boaters Without a Home Mooring*. This is now subject to legal challenge in the Court of Appeal.

2.5 Recent actions by CRT

Recent policies of CRT have focussed on the need to 'reduce the numbers' of boats without home moorings in particular areas of the waterways, such as in London. However, the standard canal and river licence entitles boaters to travel where they choose on CRT waterways. There is no legal mechanism whereby CRT can limit the number of boats of any kind that navigate in a particular area, as long as they have a standard canal and river licence. Boat owners may also license their boats using the rivers-only licence which costs less and only entitles the boat to navigate on rivers where CRT is the navigation authority, such as the Rivers Lee and Stort. This licence exists because of the Public Right of Navigation on all navigable rivers. A rivers-only licence does not preclude a boat being licensed under s.17(3)(c)(ii) of the 1995 Act.

CRT has recently proposed a so-called 'community mooring permit' or 'roving mooring permit' that it claims would allow boaters without permanent moorings to continue to 'pursue their chosen lifestyle' travelling within a specific geographic area without facing enforcement action, regardless of the fact that the movements of their boats already comply with the law, as stated above. This community or roving mooring permit would cost around the same price as the cheapest moorings in the area. This amounts to demanding money with menaces.

CRT is also proposing 'local mooring strategies' that seek to define the travel patterns that a boater without a permanent mooring must follow in order to comply with s.17(3)(c)(ii). To prescribe such a travel pattern would also be unlawful, because doing so would set movement requirements that are above and beyond what is required by s.17(3)(c)(ii). These movement requirements are likely to also be in excess of the requirements set out in the *Guidance for Boaters Without a Home Mooring* (which is subject to legal challenge as stated above).

In some locations CRT is proposing overstaying charges for visitor moorings of £25 per day. These charges are not lawful. Firstly, no specific authority has been granted by Parliament to CRT to impose either a charge or a penalty for a violation of the time limits on visitor moorings. Secondly, the level of the charge at £25 per day bears no relationship to any proper charge for the use of the waterways nor to the actual loss or costs associated with overstaying. It is therefore in the nature of a fine or penalty. It is unreasonable in amount because the purpose as stated in the consultation document is to deter overstaying. The consultation does not explain how the £25 per day extended stay charge has been arrived at, stating only that it reflects the costs of keeping visitor moorings available without any explanation of how this has been arrived at. The fixed daily element is inconsistent with this because the costs of enforcement cannot increase in this way and cannot realistically be considered to do so. The charge is fixed at a level to make it impossible to stay for any extended period. It amounts to £9,125 per annum compared to an average annual mooring fee of around £2,000. This makes it a fine and not a charge, and BW conceded in 2009 that it does not have the power to levy fines for overstaying. It is therefore outside the powers in s.43 of the 1962 Transport Act and any inclusion in the terms and conditions of the boat licence of a requirement to pay such charges does not bring these charges within the powers available to CRT under s.43 of the 1962 Transport Act.

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

In some road traffic cases, local authorities have been permitted to apply excess parking charges (see for example *Crossland v Chichester DC* [1984] RTR 181) but the statutory power there was different and conferred a general power in relation to use rather than a power to charge for services and facilities. A charge of that kind is still subject to the requirement that it be reasonable.

CRT and BW have asserted that they may levy such charges simply by virtue of their rights as landowner. This is misleading because a body exercising statutory powers cannot rely on the common law rights of a landowner to empower it to levy such charges (see for example the judgement in *Swan Hill Developments v British Waterways Board* [1997] EWCA Civ 1089). However, in such cases, the charging regime is a matter of contract between CRT and a licence holder. The overstaying charge is a liquidated sum payable in the event of breach of contract and the amount must be a genuine pre-estimate of loss (see for example the judgement in *The Paragon* [2009] 1 CLC 379).

CRT and Inland Waterways Association (IWA) (an organisation that is opposed to the interests of boat dwellers without permanent moorings) have recently joined forces to attack the right to live on a boat without a permanent mooring and to demonise the boaters who exercise this right. CRT and the IWA have labelled these boat dwellers 'continuous moorers', have published misleading information about their legal rights, and state that they are a problem. The CRT has refused to stop using derogatory terms about boat dwellers without home moorings or to correct inaccurate information about them on its web site. The IWA controls 75% of the private boater representation on the CRT Council

The IWA has recently proposed that boats without permanent moorings should buy a special permit to remain within what it refers to as the 'London control zone' including waterways under the control of the Environment Agency and the Port of London Authority. The IWA proposes that this permit should cover the entire area bounded by Marsworth on the Grand Union Canal; all of the Grand Union Canal branches south of Marsworth; Hertford and Bishops Stortford on the Lee and Stort Navigations; Hampton Court on the upper Thames, and the tidal Thames within London. If implemented, this would be entirely unlawful, because the only permit that boaters require by law to remain within this area is the standard canal and river licence of they are on CRT waterways or an Environment Agency navigation licence.

In this context we wish to draw the attention of the London Assembly to the recent Court of Appeal judgement in *Moore v British Waterways* [2013] EWCA Civ 73 in which it was found that Mr Moore's boat was lawfully moored and CRT/ BW did not have the legal power to seize it. Although CRT claims that this judgement only applies to the location in Brentford where Mr Moore's boat was moored, this is not correct. The judgement has implications for every public body and for all organisations that exercise statutory powers. It confirms that unless there is express statutory prohibition for a specific action, the citizen has a common law right to carry out that action. However, despite this judgement, many boaters without home moorings do not have the skills to resist the threats and bullying of CRT/ BW, and many will be pressurised into paying for these so-called community or roving mooring permits and overstaying charges.

2.6 The consequences of enforcement action by CRT

Enforcement of s.17(3)(c)(ii) of the 1995 British Waterways Act can lead to termination of the boat licence. Once a boat licence is terminated, this means that the boat is unlicensed and CRT has the power to seize and sell it or require its removal from the entirety of its waterways, under s.8(2) of the 1983 British Waterways Act. When obtaining an order under s.8(2) of the 1983 Act, CRT (and BW before it) also obtain an injunction preventing the boat owner from ever keeping a boat on CRT waterways again. In other words, for a breach of movement rules that go beyond what is stated in the 1995 British Waterways Act, a boater may lose their home, lose the only asset that they own, and be evicted for life from 80% of Britain's inland waterways. This is a disproportionate remedy.

2.7 Violation of the Article 6 rights of boat dwellers without permanent moorings

CRT recently conceded that it cannot lawfully specify a minimum distance that boaters without home moorings must travel in order to comply with s. 17(3)(c)(ii) of the 1995 British Waterways Act. In a background paper for a meeting on 28 November 2012, in response to a question "why can't you make it simpler and just tell us how far it's necessary to move?" that had been raised before the meeting, Sally Ash, CRT Head of Boating, stated: "We would if we could but it'd be wrong and we'd be going beyond our powers".

Every year, large numbers of boat dwellers without permanent moorings receive enforcement

notices from CRT (and BW before it) as part of the 'Continuous Cruising' enforcement procedure stating that they have not travelled far enough to comply with s. 17(3)(c)(ii) and that they are consequently at risk of having their boat seized by CRT/BW because the boat has remained between two specific places over a period of (usually) three months. However, the majority of these boaters have complied with s. 17(3)(c)(ii) and have travelled to a different place every 14 days. At no point in the process are they told how far they must travel or what they must do to comply with the law.

To inform a boat dweller that the movements of his or her boat are not sufficient to comply with the law but not to tell them how far they must travel in order to comply, is a violation of their rights under Article 6 of the European Convention on Human Rights. To threaten to seize or require the removal of their home as a consequence is a violation of their rights under Article 8 of the European Convention on Human Rights. The judgement in *Moore v British Waterways* [2013] EWCA Civ 73 is also relevant to this issue. The judgement confirmed the principle that the law must be written and enforced in such a way that the citizen is capable of knowing when his actions are unlawful. The enforcement of s.17(3)(c)(ii) as it is currently carried out by CRT fails this test.

2.8 Sick, disabled and injured boaters and age and disability discrimination issues

s. 17(3)(c)(ii) of the 1995 British Waterways Act states that a boater without a home mooring is entitled to stay longer than 14 days in a place if it is reasonable in the circumstances. "Reasonable" and "circumstances" are not defined in the Act, and nor does the Act set a limit on how much longer a boater can stay in one place. Sickness, injury, pregnancy, bereavement, illness of a family member not resident on the boat, hospitalisation and ongoing medical treatment are some of the reasons that boaters do stay longer than 14 days.

However, in practice CRT and BW have made it extremely difficult for many boaters to exercise this right to stay as long as they need in one place to recover from illness, operations or injury or to obtain medical treatment for the length of time that they need it. Many boaters have been bullied and forced to move their boats when they have not been fit to do so and when moving the boat has resulted in them being unable to do shopping, to get water, to empty their toilets, to see their doctor or specialist, to get deliveries of gas for cooking or to get deliveries of coal for heating. In other cases, boat dwellers have made temporary arrangements to be cared for by other boat dwellers who have travelled to moor next to the person requiring the care. In some such cases, CRT enforcement staff have bullied the carer into moving their boat, leaving a vulnerable person without the care that they need.

The bullying of sick and injured boaters has caused immense distress to those who have not chosen to overstay but are simply not well enough to move their boats, or who need to be moored in a place where they do not have to walk across a plank to get on and off the boat because of their illness or injury. s. 17(3)(c)(ii) does not require the boater to seek permission for a longer stay, it merely requires that this longer stay is reasonable. In some cases boaters have been told to provide medical certificates to prove that they are ill and to prove how long they will take to recover. Being unable to provide a medical certificate means either that the boater is forced to move the boat when they are not fit to do so, or that enforcement action is taken against them which could result in them losing their home. In some cases, charges are made for medical certificates for submission to bodies other than an employer. In other cases, boaters have been told not to bother getting a medical certificate but to move their boats anyway, regardless of the illness or injury.

Sick, injured, disabled and pregnant boat dwellers and their carers need protection against being forced to move their boats when they are not fit to do so and when moving the boat will result in the loss of care, exacerbation of illness or injury, and loss of access to essential services such as shops,

sanitary facilities, water and medical care.

2.9 Disability, age and sex discrimination

A number of older boat dwellers without home moorings have suffered strokes and heart attacks, or have become less physically fit and strong due to the normal consequences of ageing. Others need ongoing treatment for chronic conditions. Some are registered disabled. Many of these boaters find it increasingly difficult to comply with s. 17(3)(c)(ii) due to their disabilities or lack of physical strength. Some are no longer able to moor their boats anywhere that a plank is needed to get on and off the boat, but can only moor their boats where they can get the boat right up against the bank before stepping off. This means that they are limited in the places that they can travel to. This puts them at risk of enforcement action for not travelling far enough. This also applies to pregnant women, who after a certain stage of pregnancy are unable to walk across a plank safely and therefore also need to moor against hard standing.

Many older and disabled boat dwellers have been subjected to enforcement action, threats and bullying. For example, a boater who was recovering from a stroke and who had been moored in or near a particular place was told to travel to a place about 25 miles away or face having his boat seized. A number of disabled boat dwellers in this situation have been pressurised or bullied into taking moorings that are non-residential, thus putting themselves at risk of planning enforcement action. Boat dwellers without home moorings who are older, pregnant or disabled need protection from unlawful age, sex and disability discrimination.

2.10 Bad weather, waterway conditions and safety

Staying longer than 14 days in one place is reasonable when weather conditions, lack of water or flooding make it unsafe to move a boat. According to the Safety Of Life At Sea regulations of the International Maritime Organisation, it is the sole responsibility of the skipper or master of a boat to decide whether it is safe to travel, and nobody has the power to interfere with that decision. This decision involves assessing the strength, fitness and experience of the skipper and the crew to travel in such conditions. However, many boat dwellers have received enforcement notices after overstaying in conditions that they decided made it unsafe for them to travel. Some boat dwellers with disabilities or mobility difficulties can only move their boats when a second person is available to act as crew. Some boat dwellers with small children need a second person to help move the boat so that the children can be kept safely inside the boat or can be kept safe while travelling on the deck.

2.11 Mechanical problems

Staying longer than 14 days in one place is also reasonable in cases of mechanical breakdown. However, many boat dwellers have experienced difficulties as a result of enforcement action against them following mechanical problems. Some boat dwellers without home moorings are on low incomes and do not have the money to pay for unexpected repairs immediately but have to wait until they have saved enough. Others work full-time. To carry out the necessary repairs following a breakdown needs either time, money or both. Many boaters on lower incomes have old boats for which engine parts are harder to obtain and sometimes have to be made specially. Finding parts for old engines or having them made can take considerable time. This can be a problem even for boat dwellers who are not short of money. In addition, it is difficult to find affordable dry docking, craning and boatyard space for those repairs that require the boat to be lifted out of the water. Not all dry docks and boatyards permit a boater to live on their boat while it is being repaired, so the boater may need to find somewhere else to stay. Many boat dwellers have had enforcement action taken against them while they are in the process of carrying out repairs following mechanical

breakdown. They need protection from enforcement action while carrying out repairs. They also need affordable boatyard and dry dock facilities where DIY repairs are permitted and where it is possible to continue living on the boat while the boat is being repaired.

3. Mooring supply - the numbers of moorings available on London waterways, whether residential moorings, visitor moorings or others; also any recent gains or losses of moorings; and affordability of moorings.

3.1 Access to 14-day moorings

In 2011 BW proposed reducing the amount of 14 day mooring space in London by converting large areas of the towpath into 7-day moorings. This was dropped following considerable opposition but CRT is now proposing significant reductions in the amount of 14-day mooring space available in the majority of its waterways in favour of 24 hour or 48 hour 'visitor moorings' for hire boats and leisure boaters. This proposal is accompanied by the imposition of charges for overstaying and no return within limits. CRT does not have the legal powers to either enforce these time limits or to force boaters to pay these charges. However, as with the enforcement of s. 17(3)(c)(ii), boaters will undoubtedly be bullied by CRT into paying these charges using the threat of having their boat seized. Boaters without permanent moorings are already entitled to moor for 14 continuous days in any one place on the towpath, so again this is an attempt to force boaters to pay for what they are already entitled to do. Boat dwellers without home moorings need to be able to moor for 14 days in any one place and they need protection against the loss of 14 day mooring space.

3.2 Better maintenance of the waterway

Many parts of the CRT waterways in London are unsuitable for mooring boats because of a lack of dredging and bank maintenance. In particular, many areas of towpath have been concreted over without installing mooring rings, making it impossible to moor boats (using the normal method of hammering mooring pins into the ground) on large stretches of London's waterways. This has caused an unnecessary concentration of moored boats in particular areas that either have mooring rings or are not concreted over.

If the necessary remedial and maintenance works were carried out, large distances of waterway would be opened up for mooring and there would be more places where liveaboard, leisure and hire boaters could moor their boats. This would eliminate any congestion that occurs due to the lack of space where it is physically possible to moor a boat. This would also make it easier for boat dwellers without permanent moorings to moor in places where they need to be.

3.3 Sanitary and rubbish disposal facilities

The provision by CRT of drinking water, sanitary and rubbish disposal facilities on the waterways in London compares very badly to provision on other CRT waterways. There are fewer water taps, rubbish and sewage disposal facilities per mile on London's waterways than almost any other CRT waterway area. Boaters in London also report constant problems of broken water taps and sewage disposal facilities and unacceptable delays to the repair of essential facilities. Boats tend to moor near facilities because boaters need to use them; if there were more facilities, the number of boats moored in particular areas would level out so that there was a more even distribution of boats around the waterways in London.

3.4 Housing Benefit

Many boat dwellers, both with and without permanent moorings, have had considerable difficulty

obtaining housing benefit. There is case law that states that Housing Benefit can be paid for a mooring fee and for the boat licence fee even when the boater does not have a home mooring and does not spend all of their time in one local authority area. However, it is a statutory requirement under s. 17(3) of the 1995 British Waterways Act not only to have a boat licence but also to have annual third party insurance and a Boat Safety Scheme (BSS) certificate examination every four years. Boat dwellers have applied for Housing Benefit to cover the costs of the compulsory insurance and BSS certificate with varying degrees of success. Insurance and BSS certificates should also be covered by Housing Benefit under the same regulation as the boat licence fee because they are periodic payments that are required by statute "in respect of, or in consequence of, use and occupation of the dwelling". The relevant case law is CH 0844 2002, CH 0318 2005 and CH 4250 2006 (reported as R(H) 9/08).

Not all boat dwellers without permanent moorings are eligible for Housing Benefit. Many are working and earn more than the qualifying limit. However many of these will also be paying off the personal loan or marine mortgage that they bought their home with. If they wanted a mooring they would not have any spare income for mooring fees and would not qualify for Housing Benefit. Others are retired with savings and pensions that enable them to live on their boats without a mooring but not to cover the cost of a mooring. Their savings and income mean that they do not qualify for Housing Benefit. Others do not wish to claim welfare benefits, preferring to remain independent and live within the limit of their wages or pensions.

4. Overcrowding, congestion and overstaying at moorings and associated facilities and on the waterways

4.1 BW's 2012 study of congestion

Boat dwellers without permanent moorings occupy less than 10% of the boats on CRT waterways. If all of these boats were placed end to end they would occupy at most 28.2 miles of waterway. This begs the question why a minority - 3,148 boats out of 33,112 - are being labelled as such a problem. In March 2012 BW produced a report on congestion that identified the following statistics:

Of the top 20 lockage sites, none were in London; London was 7th out of 11 waterway regions for lock usage; none of the the top three most congested areas were in London (they were Hurlston/Llangollen, Fradley and Braunston/Napton). The highest occurrences of boaters being affected by congestion were in North Wales and Borders and Central Shires waterway regions.

The report stated that:

"The data shows that there is no significant evidence of growing congestion or significant concern amongst private boaters or hire boaters about the subject." and

"Congestion on the canal system has been raised as a potential issue both by the trade and the IWA. The concerns seem to stem from the formation of the BW Marinas Unit and the increase in applications for new marinas on the canal network". In other words, congestion was not an issue in London and it was not caused by boat dwellers without permanent moorings.

4.2 Safety

In the year to May 2013 there was a steep increase in the number of boat dwellers in London who have been victims of crime on the towpath including burglary of boats; attempted burglary and vandalism; muggings and assaults. Where the perpetrators have been identified, almost all of these have not been boat dwellers. Before the recent rise in such crime, certain areas of the waterways in London were not considered safe to moor boats in alone, or not considered safe to moor boats in at all. For reasons of personal security, boat dwellers do not moor their boats in isolated places in

London and moor in groups, not alone. Thus, reducing crime will also reduce the perception of congestion in London.

The presence of occupied, moored boats on the waterways increases the security of all users of the towpaths whether they are boaters, walkers, anglers or cyclists. Many areas of London's waterways have benefited from the presence of liveaboard boats in increased safety and security on the towpath. This is especially important for women users of the towpath.

4.3 Facilities

The provision of more water taps, sewage disposal and rubbish disposal facilities would mean that the number of boats moored in particular areas would level out so that there was a more even distribution of boats around the waterways in London.

4.4 Defining a successful waterway

The canals in were built for use by boats. To seek to reduce the numbers of boats of a particular status using the canals in London is not consistent with the purpose and use of the canals. The balance of boat traffic may have changed from commercial to leisure and residential over time, but a busy waterway is a successful waterway. A waterway in a large city that is not used by occupied boats is likely to become an unsafe crime hotspot. Visitors to the waterways are attracted by the variety and vibrancy of boat traffic and the community who live on and use those boats.

5. Air and noise pollution - the environmental effects of engines, generators, stoves etc, including how the rules governing these are applied and enforced.

5.1 Enforcement powers and their use and misuse

CRT has enforcement powers in the Boat Licence Terms and Conditions and General Canal Byelaws 1965-1976 that cover noise pollution and nuisance. Schedule 5 (4)(b) of the boat licence terms and conditions prohibits the use of engines and generators between 8pm and 8am when the boat is stationary. Byelaws 39 and 31 prohibit causing nuisance and the obstruction of and damage to the towpath. However, CRT rarely uses these enforcement powers. To the best of the NBTA's knowledge, no prosecutions under the Byelaws have been brought in the last five years and no enforcement of the condition regarding running engines and generators has been carried out by CRT.

The 1993 Clean Air Act applies to boats on the inland waterways. Its application to boats depends on an objective assessment of whether the boat is emitting 'dark smoke' as defined by a Ringelman chart. Where a Smoke Control Order is in force, enforcement is by local authorities. CRT is not authorised to enforce the Clean Air Act 1993, and yet it has sent enforcement letters to boaters regarding smoke from solid fuel stoves wrongly citing the 1956 Clean Air Act and in areas where a Smoke Control Order is not in force.

6. Any views on steps that responsible bodies could take to address these issues

6.1 Prejudice

The NBTA believes that the problem that has been identified is the result of prejudice and a lack of understanding among local authorities, statutory bodies and house dwellers of the rights and entitlements of boat dwellers, especially boat dwellers without permanent moorings. It is essential in addressing any perceived problem to determine whether the problem is real or perceived; who

first identified it and raised it as an issue with the London Assembly; who benefits from the identification of the problem; who benefits from any proposed solutions, and whether there is a disproportionate adverse impact on any specific group of people. Solving perceived problems can only result a waste of money, time and resources. The London Assembly should examine this issue very closely and in the context of the s.149 of the 2010 Equality Act.

6.2 Proposed measures to remedy genuine problems

The following measures are steps that responsible bodies should take:

Provision of education about the rights and entitlements of boat dwellers to house dwellers, local authorities and other enforcement agencies.

Endorsement and facilitation of the right of boat licence holders to live on a boat without a permanent mooring and the legitimate nature of living on a boat without a permanent mooring.

No further reduction in the amount of 14-day mooring space in London.

Use of existing enforcement powers against noise and nuisance such as General Canal Byelaws 39 and 31 and Schedule 5 (4)(b) of the boat licence terms and conditions.

Fair and consistent enforcement of s.17(3)(c)(ii) in the way that Parliament intended, by taking action against boats that stay longer than 14 continuous days in any one place without that longer stay being reasonable.

Creation of new areas of mooring space on the towpath by means of bank maintenance, dredging and remedial work to remove concrete.

Provision of affordable boatyard and dry dock space where boat dwellers can carry out their own repairs or have repairs carried out while continuing to live aboard.

Provision of more water taps, sewage disposal and rubbish disposal facilities evenly spaced around London's waterways and faster repairs to facilities when they break down or are damaged.

National Barge Travellers Association
31 May 2013