

National Barge Travellers Association

Response to Consultation on Towpath Mooring Plan for The Kennet & Avon Canal west of Devizes

About you

Firstly about you - please complete this section to help us fully evaluate responses to this consultation

What is your primary interest in the K&A?

- a. Boating
- b. Cycling
- c. Walking
- d. Fishing
- e. Wildlife
- f. Other X (please state) National User Group. 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.

Do you own a boat licensed with the Canal & River Trust? (if no move to Q1a)

- a. Yes () N/A
- b. No ()

Is the boat your primary residence?

- a. Yes
- b. No

Which type of license do you have?

- a. Home Mooring
- b. Continuous Cruising

K&A Waterways Partnership working groups Towpath Mooring Plan

Please give us your response to each of the consultation questions to help us gather your views on the proposals in the Towpath Mooring Plan. Please choose one option (strongly agree, agree, neither agree or disagree, disagree, strongly disagree) to say how you feel about that proposal. There is a space at the end of this consultation survey for you to write any other comments.

1. Local guidance, communication and compliance

The proposal recommends that a voluntary agreement and a suite of very clear local guidelines are produced in order to provide boaters with the confidence that they are using the K&A waterway on a fair and equitable basis that will not attract enforcement action.

The voluntary agreement and guidelines would include:

a. Boaters agreeing to move to a new place every 14 days, unless it is reasonable in the circumstances to stay longer.

Strongly agree X

Agree

Neither agree or disagree

Disagree

Strongly disagree

b. Where appropriate, cases of concern which the Trust staff feel are not clearly 'reasonable in the circumstances' will be referred to a partnership sub group for review and may be subject to challenge.

Strongly agree

Agree X

Neither agree or disagree

Disagree

Strongly disagree

c. Boaters agreeing to vary the places they select to moor, and each time they move they agree not to move back to the place they have just come from (unless they are reversing the direction of travel or momentarily accessing essential services).

Strongly agree

Agree X

Neither agree or disagree

Disagree

Strongly disagree

d. Boaters agreeing not to 'Bridge Hop' (the term used to describe when a boat moves from one place to another adjacent to it and then back to the same place).

Strongly agree

Agree X

Neither agree or disagree

Disagree

Strongly disagree

e. A map of local Places will be published that reflects the local geography and the places determined in a consistent fashion. The places will reflect the advice provided by Canal & River Trust in the local guidance. A map of places has been produced by the working group (see appendix 1), it is proposed that these are used during the 12 month pilot and then reviewed. The Towpath Mooring Plan will reflect the map of places.

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree X

2. Range of movement

The proposal includes a range of movement that, when implemented alongside the other proposals, could help encourage new navigation habits by boaters.

a. Boaters would agree that over the period spanning a boat's annual licence to achieve a range of movement that exceeds 20 km.

Strongly agree

Agree

Neither agree or disagree X

Disagree

Strongly disagree

3. Compliance

To effectively implement the 12 month pilot the following measures to apply;

a. C&RT would undertake regular, consistent and fair enforcement of the 14 day mooring rule, applied firmly and fairly to all boats, whether they are lived-on or empty.

Strongly agree X

Agree

Neither agree or disagree

Disagree

Strongly disagree

b. C&RT would take enforcement action against boats that have been shown to have persistently disregarded Local Guidelines.

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree X

4. Communications

A widely published local consensus could carry an authority of its own and encourage boaters to observe all such locally-approved guidance.

a. Updated signage, boundary markers (existing structures would be used wherever possible) and a towpath mooring map and information leaflets would be published to explain the local guidance.

Strongly agree

Agree

Neither agree or disagree X

Disagree

Strongly disagree

b. Boaters would be encouraged to self-declare their intentions with notices posted on their

boats; for example an anticipated next move date (“next move before....”).

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree X

c. A summary of anonymous cruising records should be publicly available to show how boats are moving on the K&A in line with the guidance.

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree X

d. Individual boaters would be able to access their own navigation records held by C&RT

Strongly agree
Agree X
Neither agree or disagree
Disagree
Strongly disagree

e. To effectively evaluate the 12 month pilot, and to determine whether it is appropriate to consider revision of the guidelines, the C&RT will work with the K&A Waterways Partnership to agree key measures that will be reported regularly to the partnership.

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree X

5. Accommodating boaters' existing lifestyles

The proposal recommends that boaters' chosen lifestyles will be best preserved and protected through the clarification and consistent implementation of local guidance.

The Waterways Partnership rejects Community Moorings on the Kennet & Avon Canal. The Partnership believes that Community Moorings would deny the majority of boaters and anglers access to large tracts of the towpath and is contrary to CRT Policy on the prioritisation in the development of off-line moorings over on-line moorings. Community Moorings could increase congestion and may also be a source of conflict across the boating community.

a. Community Moorings should be rejected as an option on the Kennet & Avon Canal.

Strongly agree X
Agree
Neither agree or disagree

Disagree
Strongly disagree

b. The Canal & River Trust should continue to assess the merits of exceptional situations of need, on a case by case basis.

Strongly agree
Agree X
Neither agree or disagree
Disagree
Strongly disagree

6. Visitor Moorings

a. Visitor moorings should remain free for the first 48 hours, but there should be an Extended Stay Charge for any K&A visitor mooring for more than 2 days at a time (the purpose of this would be to encourage more use by tourists visiting by boat).

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree X

b. All boats (except those registered for hire) should be limited to spending no more than four days in any calendar month at a particular visitor mooring.

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree X

c. Debts accruing through extended stay charges should be collected via C&RT's normal consumer debt collection process.

Strongly agree
Agree X
Neither agree or disagree
Disagree
Strongly disagree

d. During the 12 month trial the renewal of a boat licence would not be subject to settlement of overstay debts.

Strongly agree
Agree X
Neither agree or disagree
Disagree
Strongly disagree

e. No special provision is proposed for roving traders who must comply with the terms and

conditions of their specific licences).

Strongly agree

Agree

Neither agree or disagree X

Disagree

Strongly disagree

f. To assist boat checking all hire/hotel boats under hire will be requested to display an "under-hire" notice or symbol.

Strongly agree

Agree

Neither agree or disagree X

Disagree

Strongly disagree

g. It would be a good idea for the location and lengths of all visitor mooring sites on the canal to be reviewed and updated to meet changing demand. Boating communities and other interested parties would be invited to contribute to this review which would take place during 2014"

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree X

7. The needs of anglers

It is recommended that the requirements of anglers are incorporated into the local guidance and any voluntary code of conduct for boaters. This practice would fit with the emerging need for boaters to leave a fire break between boats in the interest of boat safety. The following guidance is recommended;

a. The need for pegging space (including for matches) for anglers should be included in any local guidance.

Strongly agree

Agree X

Neither agree or disagree

Disagree

Strongly disagree

b. The need for boaters to leave space (e.g. 3-5 metres) between boats to accommodate anglers is included in local guidance (as well as for reasons of fire safety).

Strongly agree

Agree

Neither agree or disagree

Disagree X

Strongly disagree X

8. Other recommendations

The K&A Waterways Partnership working group made a number of recommendations that are not proposed to be part of the initial 12 month pilot; however we would still like your views on these.

a. Pre-payment options, for extended stay on visitor moorings, including pay and display or phone payment systems, should be introduced as a priority.

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree X

b. When reviewed and updated national C&RT enforcement documentation and published guidance should be amended to accommodate the existence of local guidance.

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree X

c. When reviewed and updated C&RT licence renewal forms should be amended to incorporate a tick box that records the boater's commitment to read and understand any local guidance that may apply to them over the forthcoming licence period.

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree X

d. When reviewed and updated C&RT licence renewal forms should be amended to incorporate an additional tick box that enables the boater to confirm that "I understand that it is quite possible that my boat movements may attract enforcement action if I do not adhere to any local guidelines".

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree X

e. The UK Driving license points system is a widely accepted and understood concept. A points system based on this concept should be introduced to provide certainty for boaters of when enforcement action might be taken against them and could enable boaters to recover from an occasional lapse and assist C&RT to firmly and fairly enforce rules.

Strongly agree

Agree
Neither agree or disagree X
Disagree
Strongly disagree

9. Any other comments

Do you have any other comments on the proposed Towpath Mooring Plan for The Kennet & Avon Canal west of Devizes which could improve its implementation?

About You

The consultation excludes responses from people who live on boats that belong to another person. This is a shortcoming in the consultation as these people are excluded from reporting that their boat is their home and thus their response will not be analysed correctly. It also excludes from the consultation boaters whose licences have been unlawfully terminated by CRT due to alleged failure to comply with s.17 3 c ii of the 1995 British Waterways Act but who are still living on their boats.

The term 'continuous cruising' is a paraphrase of s.17 3 c ii of the 1995 British Waterways Act; 'continuous cruising' does not exist in law. The question should have been designed to reflect the fact that boats are licensed under either s.17 3 c i or s.17 3 c ii of the 1995 Act and that both may hold the Standard Canal and River licence; the Rivers Only licence or a short-term, business or commercial licence.

K&A Waterways Partnership working groups Towpath Mooring Plan

1a. Boats licensed under s.17 3 c ii of the 1995 British Waterways Act are required to do this anyway. Boats licensed under s.17 3 c i are not required to follow this travel pattern and are not required to adhere to the '14 day rule'. The wording of this question reveals that the Towpath Mooring Plan is aimed solely at placing restrictions on boaters without home moorings. There is no method by which CRT can legitimately restrict either the number of boats licensed under s.17 3 c ii or the number of boats without home moorings in any particular area of the waterways.

1b. As stated above, this only affects boaters without home moorings and again reveals that the Mooring Plan is aimed at restricting the use of a boat without a home mooring; this also applies to questions 1c to 1e. It must be made clear that the right of boaters without home moorings to stay longer than 14 days if it is reasonable in the circumstances is not subject to permission from CRT. It is for CRT to enquire into the reasonableness of the longer stay and to take action if it believes that it is not reasonable; 'reasonable' cannot be defined in advance (see *Moore v British Waterways* [2013] EWCA Civ 73) but must be taken on a case-by-case basis. The process proposed for assessment of such cases can only be lawful on this basis.

1c. Whilst this may reflect the travel pattern of the majority of boaters without home moorings, s.17 3 c ii does not include any prohibition on returning to any place within a given time period. A 'no return within' time limit was proposed by the House of Lords Select Committee in 1991, but was not included in the Act of Parliament. This is further evidence that the proposals unfairly target boats without home moorings. Boaters with home moorings are exempt from the requirement to use their boats bona fide for navigation. How will this aspect of the Mooring Plan be applied to boats with home moorings?

1d. 'Bridge hopping' is not expressly prohibited by s.17 3 c ii. The National Bargee Travellers Association would only support this measure in the context of a genuinely voluntary local agreement.

1e. 'Place' is not defined in s.17 3 c ii. CRT has no power to define 'place' or to prescribe which places boats without home moorings must travel between. Any definition of 'place' that penalises boaters for mooring at places that exist but are not defined by CRT would be arbitrary and unreasonable. This is an unenforceable, impractical and costly proposal.

1a to 1e. CRT has failed to clarify how these proposals are to be applied to boats with home moorings, who are not required to use their boats bona fide for navigation and are not bound by the 14-day rule.

2a. No minimum distance is set out in s.17 3 c ii of the 1995 British Waterways Act. Indeed CRT itself states in a document entitled Towpath Mooring Q&A that it would be unlawful and beyond CRT's powers to set a minimum distance. Although most boaters without home moorings probably travel 20km or more in a year, those who cannot are likely to be protected by the 2010 Equality Act from the application of procedures that would put them at a substantial disadvantage such as the loss of their home or eviction from the waterways. Other boaters not protected by the Equality Act may not be able to achieve this due to a need to stay within reach of ongoing health care or treatment for themselves or their children; others may need to stay within reach of a particular repair yard or engineer; those with deep draughted boats, especially historic boats, may not be able to travel beyond specific pinch points. These are all circumstances beyond the reasonable control of the boater. Boaters without home moorings who do not need to stay in one place for more than 14 days but whose movement is limited by such circumstances should not be penalised.

CRT has failed to clarify how this measure would be applied to boaters with home moorings, who are not required to use their boats bona fide for navigation.

3a. Fair and consistent enforcement of the '14-day rule' instead of enforcement of an unlawful minimum distance would resolve most of the problems that the Towpath Mooring Plan claims to address. The majority of boaters will move if they receive an correct notice that they have stayed longer than 14 days. However CRT needs to improve its procedures so that the number of days a boat has stayed is recorded accurately and all such enforcement notices are correct. The National Bargee Travellers Association currently assists many boaters who have been served with enforcement notices that are unlawful or that are issued as a result of inaccurate recording of the movements of their boat.

3b. It is obvious that this proposal relates to the 'Continuous Cruising' enforcement process. As such, it is further evidence that the proposed restrictions are unfairly and disproportionately targeted at boaters without home moorings. CRT has no power to take enforcement action against boaters who do not adhere to such local guidelines. It can only enforce the 1995 British Waterways Act. It cannot impose enforceable local guidelines without specific authority from Parliament. The local guidelines are presented in the Towpath Mooring Plan as a voluntary agreement which if followed will act as a guarantee that enforcement action will not be taken. This proposal does not reflect what is in the Towpath Mooring Plan, which was drawn up by the Local Waterway Partnership.

4a. Any signage or information should not state that enforcement action will be taken

against boats that do not follow local guidelines, but that the local guidance is a voluntary agreement and following it is a guarantee that enforcement action will not be taken.

4b. This proposal does not reflect the conclusions of the Local Mooring Strategy Steering Group (predecessor to the Local Waterway Partnership Mooring Sub-Group). The self-declaration of a "next move date" notice was proposed only for those boats that were exercising their right to stay longer than 14 days in one place if reasonable in the circumstances, to re-assure the public that boats were not overstaying in contravention of s.17 3 c ii. A requirement for all boats to declare this is onerous. This measure is also evidence that these proposals are targeted solely at boats without home moorings; boats licensed under s.17 3 c i are not bound by s.17 3 c ii.

4c. The public availability of anonymised records would potentially mean that boats could be identified by their travel pattern, which would breach their rights to confidentiality under the Data Protection Act. This is also a collective invasion of the privacy of itinerant boat dwellers, contrary to their right to respect for their private lives by virtue of Article 8 of the European Convention on Human Rights.

4d. Everyone is entitled to obtain any information that CRT holds about them by virtue of the Data Protection Act. However in many cases CRT has not responded to such Subject Access Requests within the statutory time limit. If this proposal enables boaters to obtain brief information about CRT's sightings of their boat then this would be an improvement, but it cannot be a substitute for the full release of information under the Data Protection Act. In addition, However, a means by which boaters can correct inaccurate or incomplete recording by CRT of their boat movements is badly needed. CRT frequently refuse to correct or add to their boat sighting records when boaters have exercised their Data Protection Act right to have these corrected. Boaters whose boat movements have complied with the law have been the victims of enforcement action due to CRT's incomplete records of their boat movements.

4e. The proposal to keep the Towpath Mooring Plan under review would allow CRT to change what is a locally agreed proposal to suit its aim of reducing the numbers of boats without home moorings and driving itinerant liveaboard boaters off the waterways to make way for the leisure industry. For example, Sally Ash claimed in a meeting with Bath and North East Somerset Council on 20 March 2013 that leisure users were being forced out of the K&A, but this is not supported by the evidence: the area between Devizes and Bath has one of the highest concentrations of hire boats anywhere in the country and hire boat numbers have risen steadily every year from 36 in 2003 to approximately 100 in 2013 and it is clear that the leisure industry between Bath and Devizes is expanding rather than being forced out.

The proposed local guidelines have been established with extensive consultation and have the potential to be broadly accepted by the itinerant liveaboard boaters that they are targeted at. To keep changing them would risk losing that potential broad acceptance.

It is not acceptable that itinerant liveaboard boaters are told under threat of removal of our homes that they have to follow local guidelines that go above and beyond the requirements set out in the 1995 British Waterways Act. It would be unlawful as well as unjust to keep reviewing and changing such guidelines. Ongoing revision would allow CRT to progressively erode the rights of boaters to use the waterways without a home mooring, which would be unlawful.

5a. The National Barge Travellers Association agrees with the Local Waterway Partnership's rejection of so-called Community or Roving Mooring Permits. Boaters licensed under s.17 3 c ii already have the right to stay in one place longer than 14 days if this is reasonable. To set aside stretches of waterway where no-one else can moor would prevent other boaters from using large areas of the canal. There are already too many places where boats cannot moor due to lack of dredging and lack of bank maintenance. Community Moorings are an attempt by CRT to force boaters to pay twice for doing what they are entitled to do by virtue of s.17 3 c ii of the 1995 British Waterways Act. This is extortion. CRT cannot lawfully create a Community or Roving Mooring Permit. If it did so, it would be creating a third licensing category in between the two that were created by the 1995 British Waterways Act. 17 3 c of the 1995 Act created two licence categories: (i) with a home mooring and (ii) without a home mooring. To create a third category would require change in the law, in other words an amendment to s.17 3 c. It is beyond CRT's powers to implement the Community Mooring Permit without such a change in the law. The Community Mooring Permit is not a type of home mooring as CRT claims. It does not provide a place where the boat "can reasonably be kept and may lawfully be left" as is required by s.17 3 c i of the 1995 Act, because it requires boats to move every 28 days between several places, does not guarantee that a place to moor will be available, and does not provide any additional service or facility to the purchaser of the permit.

5b. s.17 3 c ii of the 1995 British Waterways Act already confers the right to stay longer than 14 days if it is reasonable in the circumstances. Boaters who have children, are elderly or have disabilities are protected by the Equality Act 2010. It is not for CRT to assess the merits of these rights but simply to uphold them. Those who do not enjoy rights under the Equality Act are still entitled to stay longer than 14 days in "exceptional situations of need". It must be recognised that this is an entitlement that can be exercised as of right, and is not subject to the discretion of CRT.

6a and 6b. Visitor mooring time limits, non-return restrictions and extended stay charges are not lawful. They are unlawful because CRT does not have the power to set mooring restrictions of less than 14 days; to set non-return limits; to erect signs designating compulsory mooring restrictions, or to impose fines or charges for the infringement of mooring restrictions. (House of Commons Select Committee on the British Waterways Bill, 1993-94). CRT has the power under s.43 of the 1962 Transport Act to make charges and set conditions for such services and facilities for which the Enabling Acts had specifically granted a right to provide and charge for. BW confirmed to the House of Lords Select Committee on the British Waterways Bill in 1991 that it had no statutory powers to enforce such mooring restrictions or charges as are proposed in this consultation, and this is still the case today.

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

In *Moore v British Waterways* [2013], CRT argued that s.43 of the 1962 Act gave it authority to impose whatever restrictions it wished. This argument did not succeed. In the case of Mr Moore, there is no other legislation that provides CRT with the power to restrict mooring. The inference is that s.43 of the 1962 Act can only be construed to ride on top of

some other statutory power available to CRT at any given time. The judgement clarified that in a democratic society, a citizen's rights include a general right to do something unless it is restricted or prohibited in statute. There is nothing in the British Waterways legislation that prohibits mooring and therefore it must be assumed that there is a right to moor.

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

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

The judgement in *McCarthy and Stone (Developments) Ltd v Richmond upon Thames LBC* [1989] UKHL 4 in which reference is also made to the authority given in *Attorney-General v Wilts United Dairies Limited* [1922] 38 TLR 781 (HL) further underlines the principle that a body exercising statutory powers such as CRT may not make a charge unless there is express authorisation in statute to provide the service which is being charged for and to make the charge.

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

The extended stay 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. 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 for all but the wealthiest boaters 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 (for example in an email from Sally Ash to Keith Rossiter of Bathampton Parish Council) 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 either pay such charges or to adhere to local guidance on the western K&A does not bring these charges within the powers available to CRT under s.43 of the 1962 Transport Act.

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

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 in the past asserted that they can 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).

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

6c. The normal process for any organisation to recover debts of small sums of money is to make a claim in the County Court Small Claims track. Any other method of debt recovery would be unlawful and in some cases a criminal offence.

6d. It is unlawful to make the renewal of a boat licence subject to the payment of other debts that are not arrears of licence fees. The 1995 British Waterways Act sets out the conditions under which a licence is granted, renewed or refused. These conditions do not permit CRT to refuse to renew a licence because of debts owed for another purpose. In any case, in contract law it is not lawful to take money paid for one purpose and apply it to an existing debt to the same organisation that is owed for a different purpose.

6g. As stated above, visitor mooring signs are advisory, not compulsory. Additional reduction in the length of 14-day mooring space, already limited due to the condition of the canal, will further erode the right to use a boat without a home mooring. What is badly needed is not more visitor moorings, but dredging and maintenance that would free up more space on the waterway where boats could moor to the bank for 14 days. This would ease any pressure on existing visitor moorings.

7a and 7b. Courtesy towards anglers and angling club events is important, but this must be reciprocated by an understanding by anglers that fishing from lock and bridge landing

stages and facilities moorings impedes navigation and anglers should not use these moorings to fish from. There are other courtesies that boaters would appreciate from anglers, such as not throwing bait onto boat decks and fenders; not leaving unused bait on the towpath and not abandoning gear in the water that will foul boat propellers. Anglers also need to be aware that fishing from visitor moorings inconveniences boaters who need to use them: they may have mobility difficulties or need to load and unload against a hard edge. Leaving a 3-5 metre gap between boats is completely impractical to maintain on the part of the boater and impossible to enforce fairly. Boats move on and off moorings all the time and it is not possible to maintain a gap or to tell which boat failed to leave a gap.

8a. CRT does not have the power to levy extended stay charges or fines.

8 b, 8 c and 8 d. The Towpath Mooring Plan presents the local guidance as a voluntary agreement which if followed will act as a guarantee that enforcement action will not be taken. This proposal turns that guarantee on its head; it does not reflect the aims of the Towpath Mooring Plan as stated in Paragraphs 2 and 3 of the preamble. In any event, any local guidelines that are not in line with the 1995 British Waterways Act are unlawful and cannot be enforced.

8e. At present CRT does not have a procedure for informing boaters when their boat is no longer in the enforcement process. This means that they cannot tell when CRT considers that their boat movements have become lawful again, which is a violation of one of the fundamental principles of law: that the law and its enforcement must be accessible, clear and predictable so that the citizen can tell when his or her actions are unlawful. It is also a violation of our right to a fair trial under Article 6 of the European Convention on Human Rights. A points system would not fully address the failure of the enforcement process to adopt proper procedures that uphold this basic principle of law.

What happens next?

Following the consultation a summary of consultation responses will be published on the C&RT website and also communicated to boaters on the K&A. The findings of the consultation will be discussed by the K&A Waterways Partnership at the January meeting. Subject to further changes following the consultation a 12 month pilot of the Towpath Mooring Plan will begin as early as feasible in 2014.

Keep informed.

If you would like to be kept informed directly please provide you name and contact email/address

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