

National Bargee Travellers Association

Proposed transfer of Environment Agency waterways to Canal & River Trust: Submission to Department for Environment, Food and Rural Affairs

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. The term Bargee Traveller includes anyone whose home is a boat and who does not have exclusive use of 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 has very grave concerns that the proposed transfer of the Environment Agency (EA) waterways to Canal & River Trust (CRT) will have a disproportionate adverse impact on boat dwellers, especially those without permanent moorings.

1.2 As yet there are no reliable statistics regarding the population of Bargee Travellers, but this is known to include high proportions of working people on low incomes and of older people, especially older men. There is a significant minority of Bargee Travellers with disabilities resulting from both mental and physical health issues, and there are some who have Gypsy, Irish Traveller, Roma, Showman/woman and New Traveller status and/or are second or third generation Bargee Travellers including people whose Bargee Traveller ancestry goes back to long-established canal carrying families.

2. Public Right of Navigation and risk to boaters

2.1 A Public Right of Navigation has existed on all navigable rivers in the UK since Time Immemorial; it was first codified in the Magna Carta of 1214. The right has since been codified in primary legislation such as the Thames Conservancy Act 1932 and the British Waterways Act 1971. See *Tate & Lyle Industries Ltd v Greater London Council* [1983] 2 AC 509 and *Moore v British Waterways* [2013] EWCA Civ 73. The majority of the EA waterways in question are rivers.

2.2 The Public Right of Navigation includes the right to moor for temporary periods using equipment that is intended to be, and can conveniently be, taken onto and carried on board the vessel in the ordinary course of use such as ropes and mooring pins. See *Crown Estate Commissioners v Fairlie Yacht Slip Ltd* [1978] Scot CS CSIH 3: this authority referred in turn to *Gann v. Free Fishers of Whitstable* [1864] 11 HLC.

2.3 In Halsbury's Laws of England, 5th Edition at [691] the right to moor ancillary to navigation is stated as being superior to the rights of a riparian land owner to prevent boats mooring on their land. The codification of the Public Right of Navigation in primary legislation is stated such that the right to moor is maintained: see *Josie Rowland v Environment Agency* [2003] EWCA Civ 1885.

2.4 The reasonableness of the length of time that a boat is moored cannot be determined in advance but must be assessed on the facts of the case. See *Original Hartlepool Collieries Company v Gibb* [1877] 5 Ch D 713 and *Moore v British Waterways*. In *Fairlie Yacht Slip*, the Court made no ruling on what length of time constitutes "temporary". The reasonableness of the length of each stay depends on factors such as the circumstances of each boat and on river and weather conditions.

2.5 To place specific time restrictions on mooring is therefore an unlawful and unreasonable interference with the Public Right of Navigation. The current practice of the EA recognises this and the EA routinely waives mooring time limits in times of flood and severe weather. However this is not the practice of CRT and some boat owners have suffered severe consequences such as sinking, engine failure or being stranded in floods after being pressurised by CRT against their better judgement to travel in poor weather and water conditions because they were deemed to have overstayed in one place.

2.6 The proposed transfer of the EA waterways to CRT carries the risk that CRT's practice of seeking to enforce rigid mooring time limits would put boaters' lives and vessels in danger in times of severe weather.

3. Adverse impact on boat dwellers and increased risk of homelessness

3.1 It is very likely that CRT will seek to impose new Terms and Conditions on the registration of boats. CRT has a track record of seeking to progressively impose increasingly onerous and unlawful Terms and Conditions on boat licence holders. For example, CRT unilaterally changed the General Terms and Conditions of Boat Licences in 2008; 2010; 2011; 2012; 2013 and 2015, in most cases without any consultation with boaters. These changes have been detrimental to Bargee Travellers. CRT also has a track record of seeking to remove Bargee Travellers from its waterways and it is very likely that it will seek to remove Bargee Travellers from the EA navigations through the use of imposed changes to Terms and Conditions if it takes over these waterways.

3.2 CRT and EA waterways have a different legislative framework. A Bargee Traveller who is unable to comply with the unlawful travel requirements that CRT has imposed for compliance with Section 17 3 c ii of the British Waterways Act 1995 can navigate on EA waterways without being subjected to the same requirements or the attendant risk of licence/registration termination and subsequent homelessness, due to the different legislative framework of the EA waterways. If the EA waterways are transferred to CRT, it is likely that CRT will seek to impose similar unlawful travel requirements on the EA waterways which Bargee Travellers may not be able to comply with. This will effectively exclude many Bargee Travellers from almost all of the UK's inland waterways, rendering them homeless.

3.3 At present, if a Bargee Traveller is removed from CRT waterways due to alleged non-compliance with Section 17 3 c ii of the British Waterways Act 1995, they have the option of moving to the 640 miles of EA waterways, especially those that are connected to the main inland waterway system.

3.4 Whenever CRT successfully obtains Section 8 and Section 13 orders under the 1983 and 1971 British Waterways Acts against a Bargee Traveller, it also obtains an injunction preventing the boat owner from keeping their boat on CRT waterways for life. The penalty for breach of such an injunction is imprisonment and/or the seizure of the boat. If CRT takes over the EA waterways, although the legislative framework and consequent travel requirements may be different, there will be nothing to prevent CRT from extending the reach of such an injunction to include the former EA waterways in addition. This would serve to exclude affected Bargee Travellers, and affected boat dwellers who may have been living on permanent moorings on CRT waterways, from the majority of the UK's inland waterways, effectively giving them and their boats nowhere else to go, making them homeless.

3.5 The EA also has powers to remove boats from its waterways including under the Environment Agency (Inland Waterways) Order 2010. This does not normally include the use of an injunction but if CRT takes over the EA navigations it is likely that this practice would be extended to the EA waterways resulting in an increase in homelessness among boat dwellers.

3.6 CRT enforcement staff have been known to express frustration that they cannot carry out enforcement action against Bargee Travellers who quite lawfully and legitimately leave CRT's jurisdiction to avoid further enforcement action. For example the 2011 "Final Report into non-compliance of British Waterways Continuous Cruiser regulations on the South Oxford Canal" by Enforcement Officer Lisa Jarvis, stated: "Having an adjoining waterway not controlled by British Waterways makes enforcement more difficult as boats can move between the two areas to avoid further action." Lisa Jarvis is still an Enforcement Officer with CRT. The transfer of EA waterways to CRT would intensify this persecution of Bargee Travellers.

3.7 Any integrated licensing system following a CRT takeover of the EA waterways will lead to more licence restrictions for boaters without a home mooring. For example, CRT already restricts to a limited period of 6 months the licences of boats without a home mooring that it deems not to be complying with its unlawful licence conditions. These boats are currently prevented from renewing their boat licences for the full 12 months and the imposition of a 6 month licence is the first step towards refusal to renew the boat licence by CRT. In addition, CRT places additional sanctions on those whose licences it restricts to 6 months by barring them from obtaining CRT winter moorings and blocking their access to the CRT long-term mooring web site thus preventing them from obtaining a CRT long-term mooring. This is despite the fact that following refusal to renew a boat licence without a home mooring, CRT will only renew the licence of the affected boater on condition that they take a long-term mooring.

3.8 An integrated licensing system would make it possible for CRT to impose further licensing sanctions on boats that it deems to be non-compliant such as restricting registration on the former EA waterways or completely barring boaters from obtaining registration on former EA waterways. For CRT to adopt this practice would be vindictive and unjust given that the legal framework governing the EA waterways is completely different from that of CRT waterways, but past experience shows that CRT has very little concern about the lawfulness of such restrictions.

3.9 At present, the cost of CRT licence and EA registration fees is broadly comparable with some differences. A CRT Standard Canal and River Licence for a 57' boat in 2016-2017 costs £933.73. Registration for a similar sized boat on the River Thames costs £667.80. However the Gold licence, that confers the right to use both CRT and EA waterways for a similar sized boat is £1,173.00. We are in no doubt that a CRT takeover of the EA waterways will result in the licence fee being increased to the level of the Gold licence. This would disadvantage many boat dwellers, who are known to be in the lowest income groups. For example a 2011 survey of boat dwellers without permanent moorings on the Kennet and Avon Canal showed that 51% had an annual income below 20,000, yet 72% were not claiming benefits. A similar survey in London in 2011 showed that 87% were not claiming benefits. Those who depend on Housing Benefit to pay their licence or registration fees would be the most disadvantaged, because it is unlikely that Housing Benefit and/or Universal Credit would cover the cost of the increased fee. The result would be greater poverty among a population that is already financially disadvantaged, leading to an increase in homelessness due to the rise in the numbers who are unable to pay the increased licence or registration fees.

3.10 The most serious consequence of a transfer of EA waterways to CRT would be the worsening of conditions, increased insecurity and a rise in evictions and homelessness for all of the existing boat dwellers on EA waterways, whether or not they have a permanent mooring. However, the consequences for Bargee Travellers on EA waterways will be the most severe. Accurate figures do not exist for the number of Bargee Travellers on EA waterways but the NBTA estimates that there may be as many as 10,000. These boat dwellers will be faced with a punitive and draconian enforcement regime that will be implemented through unilateral changes to registration terms and conditions and *ultra vires* re-interpretation of legislation without judicial

sanction.

3.11 The current enforcement policy of CRT includes the following violations of the Equality Act 2010: failing to inform boaters without permanent moorings that if they are disabled, elderly or pregnant they have rights under the Equality Act 2010 not to have enforcement action taken against them if they fail to travel in the manner or distance that able-bodied, younger boaters are capable of; taking enforcement action against boaters even when they have informed CRT staff that they have a disability or have become less able due to advancing age, and failing to meet the requirements of the Equality Act in respect of pregnancy and maternity by limiting the relaxation of enforcement to merely one month before and after the birth and allowing them to believe that this is a favour as opposed to a right.

3.12 CRT's enforcement policy against boaters without permanent moorings goes beyond the powers stated in Section 17 3 c ii of the the British Waterways Act 1995. The enforcement by CRT of its interpretation of Section 17 3 c ii uses the threat of homelessness to pressurise boaters without permanent moorings to travel so far that their children are unable to attend school and they cannot sustain their employment. Head teachers have condemned this enforcement policy as "inhumane"; are very concerned about the effect on the education and welfare of children and report having to deploy scarce resources to mitigate its effects.

3.13 The violations by CRT of the Equality Act and the *ultra vires* nature of CRT's enforcement policy regarding Bargee Travellers means that transferring the EA waterways to CRT will have a significant adverse effect on Bargee Travellers on the existing EA waterways as the same policy objectives will be applied to these waterways.

4. Lack of choice and potential monopoly

4.1 CRT is the largest inland navigation authority in the UK. It manages around 2000 miles of waterways. The EA and the Broads Authority are the second and third largest. The Norfolk and Suffolk Broads are not connected to the rest of the inland waterway system. The majority of the EA's 640 miles of waterways are accessible from CRT waterways and vice versa. The other 21 or so inland navigation authorities' waterways that are connected to the inland system and usable by private boats amount to a total length of only 310 miles. For CRT to take over the 640 miles of EA waterways would result in a vast reduction in consumer choice regarding the use of the inland waterways.

4.2 At present, boaters who are unhappy with the way that CRT runs its waterways and with its treatment of its boat licence holders have the choice of travelling to the 640 miles of EA waterways, most of which are connected to the rest of the waterway system. To remove these 640 miles of waterways from EA jurisdiction will vastly reduce consumer choice to the extent that an unacceptable monopoly will be created. Such a monopoly will have an adverse effect on all boaters, but the effect on those who live on their boats (both Bargee Travellers and those who have a home mooring) will be the most detrimental because there will be virtually nowhere else they can go.

5. Adverse effect of disconnection of EA waterways from Parliamentary oversight

5.1 The adverse effect on Bargee Travellers of disconnecting the EA waterways from Parliamentary oversight cannot be underestimated. In 2012, the NBTA made submissions to Parliament regarding the risks to Bargee Travellers of the removal of Parliamentary oversight resulting from the proposed transfer of British Waterways (BW) to CRT. Most of the consequences that the NBTA predicted in its submissions have come into effect. A copy of the relevant submission is attached with this response (Appendix 1).

5.2 The detrimental effect on Bargee Travellers of the transfer from BW to CRT cannot be over-estimated. The persecution of Bargee Travellers by CRT has grown exponentially as the result of the transfer. The reason for this is the change of governance structure implemented by the transfer. The governance structure of CRT includes a Board of Trustees and a Council. In its first four years the four members representing private boaters on the CRT Council consisted entirely of people who were office holders or active members of the Inland Waterways Association (IWA): Clive Henderson, Vaughan Welch, Ivor Caplan and Ann Farrell.

5.3 The IWA leadership has been opposed for many years to the interests of Bargee Travellers and to residential use of the waterways which it believes should be primarily for recreation. Between 1991 and 1994 the IWA submitted evidence to this effect to the Select Committees that drafted the British Waterways Act 1995, and it stated in a meeting with CRT on 3rd November 2014 that boats without a home mooring should travel a total range of 500 miles during their licence period in order to be deemed to comply with the law; if implemented, this would prevent all Bargee Travellers from sending their children to school, accessing employment, receiving health care and caring for elderly relatives, in total violation of their rights under Article 8 and Protocol 1, Article 2 of the European Convention on Human Rights.

5.4 The IWA's dominance within the CRT Council has meant that the IWA's anti-Bargee Traveller agenda has had a far stronger influence on CRT's decision making and enforcement policy. This is despite the Charity Commission's efforts to prevent small groups with a specific agenda from dominating the governance of charities. In the Charity Commission report, Tackling abuse and mismanagement 2014-15, Chairman William Shawcross said:

“At the core of good governance is effective, collective decision making by trustees. In some of our cases, we see individuals, or small groups - some of whom may not even be trustees - dominating a charity, making unilateral decisions preventing decisions being made properly and excluding the skills and expertise of others. When individuals in a charity are too dominant, trustees may fail in their duty to give proper consideration to decisions for which they are responsible.”

He continued: “Many charities work with vulnerable beneficiaries, including older people, the young and the sick. Whilst we do not investigate individual cases of abuse, we do work to ensure trustees have in place and implement proper procedures to safeguard vulnerable people in their charge. This is a serious matter, with 1,042 reports of serious incidents last year. To ensure the most effective response possible to this challenge, we recently convened a Safeguarding Advisory Group to bring together to coordinate our efforts with other agencies tasked with protecting vulnerable people”.

5.5 There is a significant minority of Bargee Travellers who are vulnerable due to mental health issues, age or disability. The potential for harm to vulnerable boat dwellers on the EA waterways of transition to the far more draconian enforcement regime of CRT cannot be overestimated.

6. Property development

6.1 CRT is engaged in significant property development activities on waterside land. These activities regularly include the direct or indirect exclusion of Bargee Travellers from areas where they customarily moored their homes either for 14 days on the towpath or for longer in the case of moorings at wharves and quays on the off-side.

6.2 Transferring the EA waterways to CRT will mean that these property development activities will extend to land and property owned by the EA, with the consequent displacement of Bargee Travellers who customarily moor at these locations.

6.3 In one case this year, CRT sold approximately half a hectare of the freehold of the River Lee Navigation in London to property developer Vastint UK B.V. This land formed part of the 'protected assets' acquired by CRT under the British Waterways Transfer of Functions Order 2012 'to hold permanently for the benefit of the public'. This was carried out despite the fact that Section 117 of the Charities Act 2011 Act places restrictions on the disposal of property and land that is held for stipulated purposes, which applies in this case to the Lee Navigation. The sale of part of the river bed was to enable the developer to avoid additional expense in building a new river wall on its own land. There is no evidence that a promised public consultation was ever carried out.

7. Maintenance track record of CRT

7.1 The NBTA is aware that the National Association of Boat Owners has made representations about the risk to the funding of the operation and maintenance of the EA navigations that is likely to result from transferring these waterways to CRT. The NBTA agrees with NABO regarding the detrimental effect on waterway operation and maintenance and on flood control measures and echoes its concerns. A copy of the relevant submission is attached with this response (Appendix 2).

8. Recommendations

8.1 The proposed transfer of the EA waterways to CRT should not go ahead.

8.2 If any transfer of EA waterways to CRT does go ahead, this must include representation of Bargee Travellers at both the highest level of the voluntary governance structure and at executive/ management level in order to mitigate the adverse effects that would otherwise take place.

**National Bargee Travellers Association
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