

National Barge Travellers Association (NBTA)

Statement to DEFRA Stakeholder Engagement Session (Navigation and Liveboards) on review of Canal & River Trust (CRT) grant agreement

Unintended consequences of the governance structure of CRT

Boat owners on CRT waterways are entitled to use and live on their boats without a home mooring by virtue of Section 17(3)(c)(ii) of the British Waterways Act 1995. We use the term “Bargee Traveller” to describe people who live on their boats without a permanent or “home” mooring.

The creation of the CRT Council led to a situation where for the first time, a significant number of anti-Bargee Traveller interests gained the ear of the key decision makers within CRT. This was a significant change from the governance structure of British Waterways. The election of the first CRT Council in 2011 resulted in three out of the four private boater representatives on the Council being officers of the Inland Waterways Association (IWA). In the period up to about 2019, the IWA made many public statements, such as press releases and consultation responses, that showed its opposition to boat dwellers without home moorings. Indeed, Sir Tony Baldry MP, then Chair of the All Party Parliamentary Waterways Group, made offensive, inaccurate remarks on behalf of the IWA about Bargee Travellers in the House of Commons debate on the transfer of British Waterways to CRT on 26th June 2012.

In another example, the IWA representative on the Kennet and Avon Canal Local Mooring Strategy Steering Group stated in an email in August 2011 that in his view the aim of the strategy is to “reduce the numbers of those living on the canal... there will be no question of anyone being forced to give up home, school or job in the short term. Over the longer term - say five years - they would be able to plan for a different life-style.” In the same month, the Acting Chair of the IWA Leicestershire branch labelled boat dwellers without moorings as “squatters” who should be “stamped on”.

The term of office of the Council is four years. This meant that from 2011 to 2015 and beyond, the governing body of CRT was openly and actively working to remove boat dwellers without home moorings, regardless of their entitlements under the British Waterways Act 1995. The culmination of this sustained attack on the rights of Bargee Travellers was the punitive and unlawful enforcement policy announced in February 2015. It is only recently that one Bargee Traveller was elected to the CRT Council in December 2019, and that single Council member has so far been unable to reverse CRT's punitive policy towards our community.

From 2015, many Bargee Travellers had their licence renewals restricted to 6 months or less following CRT's punitive 2015 enforcement policy (see below). In both the 2015 and 2019 CRT Council elections, CRT initially barred boaters with less than 12-month licences from voting. This would have disenfranchised a significant minority of the liveboard boater community. It was only because the NBTA made complaints about the exclusion of restricted licence holders from the election that they were able to vote in the 2015 and 2019 CRT Council elections.

The unaccountability of CRT

In the debate in the House of Commons regarding the transfer of British Waterways to

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

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

CRT's unlawful, punitive enforcement policy

Bargee Travellers on CRT waterways are being subjected to a cruel, punitive unjust and unlawful enforcement policy instigated in 2015 that forces them to travel distances that put their homes, jobs and their children's education at risk.

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

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

Out of a total of approximately 35,000 licensed boats on Canal & River Trust's waterways, only around 5,300 are licensed without a permanent mooring.

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

CRT declared on 13th February 2015 that from 1st May 2015 it would refuse to re-license all boats that "don't move ... far enough or often enough" to meet its Guidance – unless they take a permanent mooring. Unlicensed boats can be removed and destroyed by CRT using powers under Section 8(2) of the British Waterways Act 1983 and Section 13(3)(a) of the British Waterways Act 1971. In cases where a boat is lived on, CRT obtains a Court Order and also obtains an Injunction banning the boat dweller for life from returning to its waterways. Breach of an Injunction carries the penalty of arrest and imprisonment. Therefore, the boat dweller not only becomes homeless but loses the only asset that they own.

On 3rd March 2015 CRT stated on its web site that "...we can advise that it is very unlikely that someone would be able to satisfy us that they have been genuinely cruising if their range of movement is less than 15-20 miles over the period of their licence. In most cases we would expect it to be greater than this". "Greater than this" has never been defined by CRT. This is fundamentally unjust, contrary to one of the key principles of British law that

the citizen should be able to tell when his or her actions would be unlawful. Subsequently, references to “15-20 miles” were removed from the CRT web site and communications to boaters on this issue now only refer to 20 miles.

The effect of this change in policy was that Bargee Travellers who had the same travel pattern for many years and whose licences had been renewed without any issues for up to 20 years, are now told that their annual travel patterns no longer comply with the law even though the law has not changed since the 1995 Act was passed.

Why the enforcement policy is unlawful

In 2004 British Waterways, the predecessor to CRT, published *Mooring Guidance for Continuous Cruisers*. In 2011 this was revised and re-published as *Guidance for Boaters Without a Home Mooring* as the result of a County Court judgment in the case *British Waterways v Davies*. The Davies judgment meant that CRT made the Guidance less stringent, removing the requirement for “a progressive journey around the entire waterway system or a significant part of it” as the result of the Judge's decision. The 2011 Guidance however, still set travel requirements that go beyond what is stated in Section 17(3)(c)(ii) of the British Waterways Act 1995.

In 1990, British Waterways sought powers to force all boats to have a mooring and criminal penalties against anyone caught living on their boat without a permanent residential mooring and a houseboat certificate. Parliament refused British Waterways these powers on the basis that they were harsh and draconian, and acted to protect the 10,000 or so boat dwellers that would have become homeless in 1995 by wording Section 17 (3)(c)(ii) of the British Waterways Act 1995 in such a way that it included a wide variety of patterns of boat use. Parliament heard evidence from boat dwellers who needed to remain close to a place of work, children's education, health care or elderly relatives, and worded the Act to balance their needs with those of the leisure industry and effective management of the waterways.

The requirement not to remain continuously in any one place for more than 14 days is clearly stated and lawful. However, the 1995 Act does not contain any requirement to travel a minimum distance or to follow any specific cruising pattern beyond the 14-day limit in order to comply with the requirement to use the boat 'bona fide for navigation'.

A draft amendment proposed in the House of Lords Special Report from the Select Committee on the British Waterways Bill, 3rd July 1991, Appendix II, page 15, would have amounted to a requirement for a minimum distance, but this amendment does not appear in the final Act of Parliament. The amendment would have required boats licensed without a home mooring to “be used bona fide for navigation throughout the period that the consent is valid without remaining in any one place for more than 14 days in any calendar year”. If the amendment had been included, given that the distance between places is at least one mile, these boats would have been compelled to travel in a range of at least 26 miles every year. However, the amendment was dropped, and the Act was passed without any specified distance or range and without any “no-return-within” periods the would have prevented Bargee Travellers going back to places they had visited within a given period.

'Restricted' licences

In order to enforce the spurious distance requirement contained in its 2015 enforcement policy, CRT has adopted the practice of restricting the licence renewals of Bargee

Travellers whom it considered non-compliant to a limited period of six months so that they could “improve” their boat movements. Those who move the least are faced directly with refusal to renew their licence without a home mooring. The restriction of licence renewal to a shorter period is a direct threat of homelessness to the Bargee Traveller by CRT since it carries the threat of eventual non-renewal of the licence, which leads directly to removal of the boat. The majority of Bargee Travellers who accept the restricted licence do so because of the threat of removal of their boat, and many have only managed to travel the increased range with considerable hardship to themselves and their children.

In its treatment of Bargee Travellers, CRT is failing to adhere to one of its Charitable Objects:

2.6 to promote sustainable development in the vicinity of any inland waterway for the benefit of the public, in particular by:

2.6.1 the improvement of the conditions of life in socially and economically disadvantaged communities in such vicinity;

CRT doing exactly the opposite to the Bargee Traveller community and is spending large amounts of money on legal fees to do so. A significant proportion of Bargee Travellers experience multiple disadvantage. The enforcement policy of CRT is making their social, economic and health disadvantages worse.

The struggle to obtain CRT's compliance with the Equality Act 2010

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

In the cases of disabled or elderly Bargee Travellers that the NBTA has assisted, all those who requested reasonable adjustments to CRT's enforcement policy had their complaints resolved in their favour, and enforcement action against them dropped.

CRT's treatment of a pregnant Bargee Traveller was the subject of a complaint by the Equality and Human Rights Commission (EHRC) in 2016. CRT resolved the case in the Bargee Traveller's favour, but it appeared that the “equality adjustments” [sic] subsequently offered by CRT to other pregnant Bargee Travellers fell short of those offered in the case of the complaint taken up by EHRC. The EHRC met with CRT in November 2016 to raise its concerns regarding CRT's treatment of pregnant Bargee Travellers; CRT's treatment of Bargee Travellers with school age children, and CRT's failure to publicise the rights of all boaters with relevant protected characteristics not to have the enforcement procedure applied in the same way as it is applied to those without those protected characteristics. The EHRC subsequently kept CRT's compliance with the Equality Act 2010 under review.

Mooring restrictions unfairly target Bargee Travellers

Since 2012 CRT has also been carrying out an incremental reduction in the amount of 14-day mooring space on the waterways by the gradual increase in the amount of towpath space that has been designated as Visitor Moorings with time limits of 24 to 48 hours or of 7 days and in many places the installation of a hard edge with the resulting deeper water. For most of the time, Bargee Travellers need to be in a place for 14 days. The loss of 14-day mooring space creates difficulty and hardship especially in accessing their place of employment or their children's school. The proliferation of 24 to 48 hour restrictions excludes Bargee Travellers from mooring in the most convenient places, where there is access to a road, public transport or vehicle parking space. Bargee Travellers are increasingly banished to the least desirable stretches of towpath, where the bank is difficult to moor to because of the lack of dredging, shallow water, or a poorly maintained bank, meaning that when moored, the boat will be at an angle and boaters need to use a plank to get on and off the boat. CRT's strategy appears to be to incrementally reduce the 14-day mooring space so that Bargee Travellers' lives become untenable.

Recent examples of this encroachment on 14-day mooring space include the loss of 300 metres of 14 day moorings and 50 metres of 7 day moorings in Milton Keynes plus three areas of "no mooring"; the widespread reversal of CRT's recent more generous policy that most Visitor Moorings will revert to 14 days in winter; and most notably, CRT's plan to introduce so-called 'safety zones' on the River Lea in East London, which if fully implemented will result in the loss of around 550 mooring spaces. Widespread protest led to CRT apparently withdrawing the proposals pending consultation, but CRT subsequently introduced some of these restrictions by stealth without telling boaters, putting up "no mooring" signs at 33 sites between Tottenham and Hackney and 9 sites in Broxbourne. The evidence does not support the need for these so-called 'safety zones': CRT claims that collisions with powered boats have risen, but in fact the number of collisions between rowing boats and powered boats on the lower Lee dropped by 30%, from 6 to 4, in 2019.

CRT's 'safety zones' policy was created without any significant consultation with Bargee Travellers who moor in these areas, who are the group most affected by the changes. Instead, CRT based the policy entirely on feedback from rowers. CRT has not carried out a risk assessment, or an impact assessment, or an Equality Impact Assessment of the 'safety zones' proposals. CRT has also failed to set out precisely what the problem is that the 'safety zones' aim to solve; exactly how the proposals will solve the problem and how this will be measured and evaluated. CRT's policy appears to be based on an idealised notion of unhindered mooring that simply does not exist in the real world. It does not understand the users of the resource it governs and does not understand the complexity of the boating ecosystem. The fact that London hosts a busy and diverse range of boats, people, incomes and ages is a good thing and should be celebrated. The waterways are public places; boats and boaters contribute to people's enjoyment. Occupied moored boats provide passive safety on towpaths; liveaboard boats reduce the fear of crime. This is exactly what CRT needs to replicate elsewhere. CRT should promote this diversity, rather than taking action to suppress it.

The use of the concept of fairness by CRT against Bargee Travellers

It is very important in the development of any policy that a clear distinction is made between perceived unfairness and actual unfairness. CRT uses the concept of "fairness" in a way that creates unfairness towards Bargee Travellers, in the interests of giving greater access to the waterways to other users such as leisure boaters. It must be noted that CRT's most recent boat owners survey extrapolates that 75% of boat owners are leisure boaters and 25% use their boat as their home. In addition, some 86% of boats have a

mooring and only about 14% are licensed without a home mooring. Therefore CRT is restricting and persecuting a minority of boat owners in the interests of the majority. This is definitely not the way to increase “fairness” in access to the waterways. To take action to address a perception of unfairness is wasteful of resources, discriminatory, irrational and unjust. Bargee Travellers are just as entitled to moor on the towpath as the majority of boaters.

Waterway maintenance and availability of facilities

Despite numerous meetings between NBTA and CRT, access to the essential facilities of potable water, sewage disposal and rubbish disposal has not improved over the 10 years of the Trust's existence. Although some new facilities have been installed, notably in a few locations in London where more facilities are still badly needed, in general there has been a net loss of basic facilities since 2012 as certain facilities have been closed and not replaced, and others have failed and not been repaired. CRT has informed boaters a number of times over the past 5 to 7 years that it is about to carry out a review of its boater facilities, but this has not yet materialised.

To add insult to injury, CRT have also been trying to take the NBTA's argument that there are not enough facilities in London and to turn this around and say that this is because there are too many boaters in the capital.

The issue of maintenance of the waterway infrastructure is of great concern to the majority of boaters, not just to Bargee Travellers. The policy of CRT appears to be to only repair a defect after it has caused a structure failure and therefore a stoppage. The number of unplanned stoppages each year has gradually increased since 2012, especially between 2018 to 2021. CRT has failed to meet its charitable objects in this respect.

Conclusion

The NBTA believes that the operational delivery and governance framework of CRT has failed and the waterways should therefore be taken back into public ownership.

CRT has failed to take into account the changed role of waterways in society. There has been an increasing growth in demand for residential boating, both for living nomadically on the waterways and living on a permanent mooring. This has brought younger people and young families permanently onto the waterways and increased the diversity and vibrancy of the boating community. CRT has failed to recognise that residential boating is the future of the waterways as the leisure boating and retired liveaboard communities are a dwindling and ageing group, and that due to social and economic changes, future generations will be much less likely to be able to afford to live in a house and also keep a boat on the inland waterways for recreation.

The NBTA predicted in 2011 and 2012 that the transfer of British Waterways to CRT would result in significantly increased persecution of Bargee Travellers. We take no pleasure at all from being proved right 10 years later.

**National Bargee Travellers Association
December 2021**