

NATIONAL BARGEE TRAVELLERS ASSOCIATION

BRIEFING ON THE PUBLIC BODIES BILL AND BRITISH WATERWAYS (THIRD REVISION)

1 INTRODUCTION

- 1.1 The National Bargee Travellers Association (NBTA) believes that British Waterways (BW) should not be transferred to charity status because of the routine and systematic harassment, threats of homelessness and actual evictions it directs at the adults and children who live on boats on its canals and rivers.
- 1.2 This harassment is sanctioned by the Directors of BW but has no sound basis in law. If the landlord of a house treated their tenants in the same way they would be convicted of a criminal offence.
- 1.3 This raises issues of Human Rights, specifically the violation of Articles 6, 8, and 14; Protocol 1 Article 1; Protocol 2 Article 1 and Protocol 3 Article 1 of the European Convention on Human Rights.

2 THE HOMELESSNESS CONSEQUENCES OF THE BW AMENDMENT TO THE PUBLIC BODIES BILL

- 2.1 The amendment to Schedule 5 of the Public Bodies Bill secured by BW, exempting the functions of the British Waterways Board from the provisions of Clause 22 falling within Clause 22(3)(b) to (e) means that BW will have the power to make "subordinate legislation". This means that BW will have greater powers to make law than now.
- 2.2 Currently BW has the power to promote Private Acts of Parliament, Byelaws and Transport and Works Act Orders (which are in effect Statutory Instruments). The Public Bodies Bill will give BW a general power to make subordinate legislation resulting in a general power to make Statutory Instruments. The procedure for passing Statutory Instruments requires very little Parliamentary or public scrutiny compared to Private Bills and Byelaws.
- 2.3 Byelaws have to be consulted on and interested parties can petition against Private Bills and give evidence direct to the Parliamentary Select Committee which considers the Bill. In contrast the only way to effectively challenge a Statutory Instrument, whether a Transport and Works Act Order or otherwise, is to bring a judicial review. This is a difficult process and beyond the reach of most boat dwellers. We already have evidence that BW sought to increase its enforcement powers as part of the Public Bodies Bill.
- 2.4 This was discussed under item 11/003 in the BW Board meeting on 27th January 2011.
- 2.5 We do not consider that the amendments to the Public Bodies Bill agreed before 11th May 2011 relating to the use of Statutory Instruments will provide sufficient

protection for boat dwellers against the violation of their Convention rights.

- 2.6 The consequences of giving BW extra powers and removing the statutory protection for boat dwellers arising from the Human Rights Act, the 2010 Equality Act and the Freedom of Information Act that currently stem from BW's status as a public body, will be the actual or threatened homelessness, removal from school and denial of access to employment, healthcare, postal mail and voting of up to 10,000 adult and child boat dwellers.
- 2.7 The estimated 6,000 to 10,000 boat dwellers who do not have moorings for their boats will be at risk, in spite of the intention of Parliament to protect these boat dwellers when it passed the 1995 British Waterways Act.
- 2.8 Some 10% (3,500) out of the total 35,000 BW licensed boats do not have moorings (information from BW). The majority of these boats are people's homes.

3 THE RIGHTS OF BW BOAT LICENCE HOLDERS

- 3.1 The 1995 British Waterways Act entitles boat licence holders to use the waterways without a permanent mooring provided that they do not stay more than 14 continuous days in any one place.
- 3.2 s.17(3) of the Act states that in order to be licensed, a boat must be insured, must comply with safety standards, and must either have a permanent mooring 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” (s.17(3)(c)(ii)).
- 3.3 The intention of Parliament when it passed the 1995 British Waterways Act was to allow boat dwellers to continue to live on their boats without having a permanent mooring, in a way that enabled them to remain in employment; continue to send their children to school, and have protection from homelessness.
- 3.4 BW had originally sought criminal sanctions against anyone caught living on their boat without a permanent mooring including a Level 5 fine (£1,000 at the time) and a daily penalty of 10% of Level 5 (£100) (British Waterways Bill, 1990).
- 3.5 Parliament did not allow this and acted to protect the homes and livelihoods of boat dwellers (House of Commons Select Committee on the British Waterways Bill, 1993-94).
- 3.6 Consequently, the law allows boat dwellers to remain within reach of a place of work, their children's school, a GP or other health care, and to collect their mail from a land address. They can also exercise their right to vote by declaring a local connection.
- 3.7 In drafting the 1995 British Waterways Act, Parliament intended that the test for whether a boat was complying with s.17(3)(c)(ii) was whether it had remained longer than 14 continuous days in the same place without good reason.

- 3.8 The House of Commons Select Committee rejected any prohibition on returning to the same place within a specified period and declined to set any further requirements such as a minimum distance to be travelled.
- 3.9 The 1995 Act and other relevant legislation do not specify any particular travelling pattern for boats without moorings apart from the "14 day rule". (House of Commons Select Committee on the British Waterways Bill, 1993-94).

4 BW'S ATTEMPTS TO CIRCUMVENT THE 1995 ACT

- 4.1 Since 1995, BW has made many attempts to circumvent s.17(3)(c)(ii) in order to terminate the licences of boat dwellers **who do comply with s.17(3)(c)(ii)** an attempt to achieve the original objectives that Parliament considered would be detrimental to the lives of individuals and families living on boats.
- 4.2 BW has made successive attempts to force boats without moorings to follow travelling patterns which are substantially in excess of that required by the 1995 Act.
- 4.3 For example it has done this by claiming that its own interpretation of s.17(3)(c)(ii) (the *Mooring Guidance for Continuous Cruisers*) sets out what is required to comply with the 1995 Act.
- 4.4 BW has the power to terminate a licence if it believes a boat has contravened s.17 of the 1995 Act, and it also has the power to seize an unlicensed boat and charge the owner for its removal under s.8 of the 1983 British Waterways Act.
- 4.5 When it does this it also obtains an injunction which effectively evicts the owner and the boat from BW waterways for life. In other words, termination of the boat licence means that the boat dweller and their family will become homeless, be forcibly deprived of their home and be banned from BW's 2,000 miles of waterways for ever.
- 4.6 A number of boat dwellers have been made homeless in this way because they did not know enough about the law to defend themselves in court (Freedom of Information Act response from BW, 2010).
- 4.7 Many other boat dwellers have been pressurised to rent moorings which they cannot legally live on because most moorings do not have residential planning permission (personal communications from Geoff Mayers and Paul Davies).
- 4.8 Some have "gone underground" following the threat of a "s.8" [of the 1983 Act] notice and injunction and live in fear of being discovered and losing their homes.
- 4.9 The *Mooring Guidance for Continuous Cruisers*, published in 2004, states that boats without moorings must make a progressive journey throughout the entire canal system or a large part of it, without turning back unless they reach a terminus, and that acceptable reasons for remaining in one place do not include needing to have access to a place of employment or education.
- 4.10 Adhering to the *Mooring Guidance for Continuous Cruisers* prevents boat dwellers from accessing their places of work, education and health care; from collecting mail and from exercising their right to vote.

- 4.11 BW has attempted to enforce the *Mooring Guidance for Continuous Cruisers* sending letters to thousands of boats over the past few years written in extremely threatening language claiming that not following the *Mooring Guidance for Continuous Cruisers* amounts to contravention of the law and saying (as examples)
- "your boat has been seen between X and Y" (two distinct places which are many miles apart);
 - "we may remove and demolish your boat";
 - "it is likely that you will need to make arrangements for alternative accommodation. Please contact your local Council's Benefit and Housing department as they may be able to help you find another place to live"; and
 - "You are at risk of losing your boat".
- 4.12 Some 150 boats on the Kennet and Avon canal were served such letters in June 2009 for example (BW enforcement letter to Pamela Smith).
- 4.13 At the same time, since 1995 BW has declined to use its statutory powers to enforce the "14 day rule" either consistently or fairly. This leaves boat dwellers without moorings in a position where there are no consistent consequences for staying longer than 14 days and yet they are routinely threatened with homelessness for travelling in a way that Parliament intended them to be able to do.

5 RECENT PROPOSALS BY BW FOR ADDITIONAL RESTRICTIONS ON BOAT DWELLERS

- 5.1 Since the publication of the *Mooring Guidance for Continuous Cruisers* have been successive attempts to drive out boat dwellers without moorings by imposing additional restrictions.
- 5.2 BW has worked with parish and county councils which object to the legitimate presence of lived-in boats on the canals to create restrictions on the amount of time boats without moorings can stay in particular areas (Minutes of meetings held in Bathampton on 15th June, 10th August, 28th August and 10th Sept 2009; Waterways and Public Involvement in Staffordshire 2011; Community Mooring Strategy Action Plan 2011).
- 5.3 This led to a consultation in 2009 and the publication in 2010 of new mooring policies stating that boats without moorings would be subject to "Local Mooring Strategies" including
- restricting the amount of 14-day mooring space available;
 - setting travelling distances and "no return within" restrictions substantially above and beyond those required by the 1995 Act;
 - charging boaters daily fees of up to £14,000 per year to stay longer than the time limits, and
 - enforcing these charges by not renewing the boat licence until the charges are paid.
- 5.4 All of these restrictions are unlawful and are targeted against boats without moorings. BW is currently seeking to impose such restrictions on
- the Kennet and Avon canal;
 - the Lee and Stort navigations

- in Staffordshire and
- is proposing to do so in many other locations (Policies for Mooring Along the Banks of BW Waterways 2010; Proposals for the Management of Moorings along the Rivers Lee & Stort, Hertford Union and Regents Canals 2011).

- 5.5 The effect of these restrictions if complied with would be to force boat dwellers to travel distances that would prevent them from being able to travel to a place of employment; prevent them from sending their children to school; prevent them from accessing ongoing health care from a GP, clinic or hospital; prevent them from collecting mail from a land address, and prevent them from exercising their right to vote by making a declaration of local connection.
- 5.6 If they wish to retain access to their workplace, school, health care, correspondence and right to vote, they will face homelessness following termination of the boat licence either for not complying with the restrictions or for being unable to pay excess mooring charges of up to £14,000 per year demanded at £40 per day.
- 5.7 These are punitive sums compared to the cost of a permanent mooring which is around £2,000 per year and as such amounts to a fine even though it is called a "charge for an extended stay" in BW's 2010 mooring policy.

6 LAWFULNESS OF PROPOSED RESTRICTIONS

- 6.1 These restrictions are unlawful because BW does not have the power to set mooring restrictions, to erect signs delineating mooring restrictions, or to impose fines for the infringement of mooring restrictions. (House of Commons Select Committee on the British Waterways Bill, 1993-94).
- 6.2 BW enjoys a "catch all" power under s.43 of the 1962 Transport Act in relation to its management of the waterways. However it is reasonable to conclude that subsequent legislation modifies this "catch all" accordingly. Further, legislation that acts as an "override" (such as the Human Rights Act and the Equality Act) further qualify this "catch all". As stated above, Parliament did not allow BW to impose criminal sanctions or daily fines against anyone caught living on their boat without a permanent mooring.
- 6.3 In the original 1990 Bill BW had sought powers to impose fines for a breach of a mooring restriction. BW also sought powers in the 1990 Bill to post 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 posting of signs designating mooring restrictions.
- 6.4 BW had previously presented evidence that stated that signs designating mooring restrictions were advisory in nature. BW also withdrew the wording relating to the designation of mooring restrictions.
- 6.5 BW had also laid out in the 1990 Bill an offence for failing to obey an instruction of a BW officer which was also denied by Parliament.
- 6.6 The Commons Select Committee also rejected any "no return within" restrictions (House of Commons Select Committee on the British Waterways Bill, 1993-94).

- 6.7 As a consequence this meant that BW was confirming that any mooring restriction would remain as “advisory” and not “obligatory”.
- 6.8 A further principle in law is that legislation is written in “living words” and the meaning of the words does not change with changing circumstances. The current legislation is binding and must be interpreted in the courts in line with the original meaning of the words and the original Will of Parliament.
- 6.9 These factors combine to provide an override over s.43 of the 1962 Transport Act so as to prevent BW from designating compulsory mooring restrictions and from setting movement rules beyond what is in s.17(3)(c)(ii) of the 1995 Act (the “14 day rule”).
- 6.10 In this context the authority given in *McCarthy & 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 public body such as BW may not make a charge unless there is express authorisation in statute to do so.
- 6.11 Furthermore, in *R v Secretary of State for the Environment and others, ex parte Greenpeace Ltd and anr* [1994] 4 All ER 352, Potts J stated:
“Primary legislation is not to be construed by reference to general policy statements or departmental guidance”.
In other words, primary legislation stands on its own two feet.
- 6.12 Where guidance or policy statements are used to justify the interpretation of legislation by a public body so that the public body may achieve its objective, that public body is inherently going beyond the scope of the primary legislation and is acting *ultra vires*.

7 BRISTOL COUNTY COURT JUDGEMENT

- 7.1 In 2010 BW took action against Paul Davies in Bristol County Court on the grounds that he had not complied with s.17(3)(c)(ii).
- 7.2 The judgement stated that Mr Davies' cruising distance was not enough to comply but declined to endorse BW's *Mooring Guidance for Continuous Cruisers*.
- 7.3 The Court did not hear evidence regarding the House of Commons Select Committee deliberations in 1993-94 because this information was not available to Mr Davies at the time.
- 7.4 Despite the judgement being in a county court and consequently not forming case law, BW issued a press release misleading the public into believing that this judgement set a precedent which would apply to other boaters without moorings.
- 7.5 It has subsequently sent letters to a number of boats without moorings enclosing this press release, claiming that the judgement applies and that they are contravening the law even though they do move to a different place every 14 days (personal communication from Abigail North).

- 7.6 The NBTA has therefore issued a complaint to the Waterways Ombudsman to this effect.
- 7.7 It has now also become apparent that BW are now denying that it has done this, stating that this is a “vicious rumour”.

8 HARASSMENT OF BOAT DWELLERS

- 8.1 In another case in Bristol, BW is attempting to seize a boat and remove the owner George Ward from its waterways for non-payment of a debt of £150.
- 8.2 Tenants of houses are explicitly protected from eviction for debts of this size.
- 8.3 In Cheshire in 2010, BW forced sick pensioners and their carers to move their boats in freezing conditions with the result that one of them had to be rushed to hospital the following day.
- 8.4 BW has also issued patrol notices requiring boats to move when they have been prevented from travelling by thick ice (personal communication from Geoff Mayers).
- 8.5 Paul Davies himself has been forced to give up his job and leave BW waterways. He was unable to meet the Court's requirement to comply by taking a mooring because no residential moorings were available (personal communication from Paul Davies).
- 8.6 In his efforts to leave the jurisdiction of BW, Paul Davies travelled along the Kennet and Avon Canal, down the Thames to London with the view of travelling along the Grand Union and thus onto EA waters in East Anglia where he had secured a mooring from the EA.
- 8.7 Mr Davies was to enter the Grand Union Canal off the tidal Thames at Brentford on the afternoon of 5th June 2011. When he presented at Brentford lock he was denied ingress to the canal leaving him without suitable gear and in a vessel ill-equipped to be on the tidal Thames in a running tide, a highly dangerous state for a navigator.
- 8.8 The NBTA intervened including sending a FLASH message to the BW Executive Board. The Port of London Authority were made aware of the circumstances. Mr Davies was finally granted ingress to the canal the following morning but not before spending the night in an extremely precarious and dangerous position.
- 8.9 It appears that BW, not content with driving Mr Davies out of the canal system then sought to endanger his life (personal communication from Paul Davies).
- 8.10 At the 2010 BW AGM an attendee asked why the draft objectives of the new waterways charity made no mention of the thousands of adults and children who live on boats for whom the waterways are their home.
- 8.11 Robin Evans, BW Chief Executive said in response “It's questionable that giving people places to live is a charitable object”.
- 8.12 The NBTA believes that BW is clearly not fit to have charitable status. Over 1,000 Housing Associations have charitable status yet Mr Evans is unaware of this.

- 8.13 During 2009 and 2010 BW drafted revised byelaws which include many of the provisions which Parliament prevented it from including in the 1995 Act. These byelaws have been put on hold pending the move to charity status (Revised Draft Byelaws 2010).
- 8.14 If BW is given the power to pass Statutory Instruments there is no doubt that it will use those powers to achieve its 1990 objectives of driving out boat dwellers without moorings which Parliament would not allow it to do in 1995.
- 8.15 The homelessness and displacement resulting from this would be unthinkable in any event.
- 8.16 However the EU has just announced a strategy to integrate Europe's 11 million Gypsies and Travellers and the UK has been given until the end of 2011 to draw up a national plan to ensure that every homeless Traveller has access to suitable accommodation.
- 8.17 Itinerant live-aboard boaters are defined as being "Bargee Travellers". The Equality Officer of Wiltshire Council has confirmed that Bargee Travellers fall under the ambit of the Equality Act 2010 and as such enjoy "protected characteristics". It follows that itinerant live-aboard boaters fall within the scope of the EU Gypsy and Traveller initiative and as such BW has a role to play in actively supporting itinerant live-aboard boaters rather than persecuting them.
- 8.18 In April 2009 the Secretary of State for Communities write to the NBTA and confirmed that Bargee Travellers fell under the scope of s.225 Housing Act 2004. This section refers to an obligation of housing authorities to take into account the needs of travellers within its jurisdiction.
- 8.19 Bargee Travellers have historically been excluded from the bi-annual caravan counts (forming part of the Gypsy and Traveller Accommodation Assessments (GTAAs) carried out by local authorities within their responsibilities under s.225).
- 8.20 One might have assumed that after the determination of the SoS in 2009, that Bargee Travellers would be included in forthcoming GTAAs and therefore guidance would be issued to local authorities to act as such. No such guidance was made.
- 8.21 In March 2011 (after the SoS Communities withdrew Circular 01/06, clarifying support for caravan-dwelling travellers by local authorities) the SoS denied that he had (1) made the determination that he had, in April 2009 and (2) denied that the communication he sent in 2009 was in fact a determination at all.
- 8.22 Given that BW has within its jurisdiction a significant number of itinerant live-aboard boaters and given the ambiguous performance of the SoS it follows that BW must be regarded as a quasi-housing authority insofar as it holds jurisdiction over the stated community.
- 8.23 Instead of upholding its obligations (whether statutory or quasi-statutory) in the recognition and adoption of considerable research and guidance relating to caravan-dwelling travellers, BW appears content in the alternative to systematically persecute itinerant live-aboard boaters.

- 8.24 In the public meetings held by BW on 1st and 2nd March 2011, forming part of the consultation of the proposals for mooring restrictions on the River Lee, BW stated that its objective was to “curtail new entrants into the live-aboard continuously-cruising market” It also stated that its objective was to “price-out existing live-aboard continuous-cruisers” and that “some members of the community will suffer as a result”.
- 8.25 To the NBTA, the policy of BW appears to be quite clear and it isn't good news for itinerant live-aboard boaters.

9 RECOMMENDATIONS BY THE NBTA

- 9.1 In order to protect boat dwellers from homelessness, BW should not be transferred to charity status unless and until the following conditions are met:
- 9.2 Section 43 (3) of the 1962 Transport Act should be declared incompatible with the European Convention on Human Rights;
- 9.3 Sections 13 (2) (3) and (4) of the 1971 British Waterways Act should be repealed;
- 9.4 Sections 8 (1) (2) (3) and (4) of the 1983 British Waterways Act should be repealed;
- 9.5 The New Waterways Charity should not have the power to bring injunctions banning boat owners from its waterways for life;
- 9.6 The Mooring Guidance for Continuous Cruisers and plans for Local Mooring Strategies should be abandoned;
- 9.7 The February 2010 Revised Draft Byelaws should be abandoned;
- 9.8 The amendment to Schedule 5 of the Public Bodies Bill secured by BW, exempting the functions of the British Waterways Board from the provisions of Clause 22 falling within section 22(3)(b) to (e) should be abandoned, and
- 9.9 The powers of BW or the New Waterways Charity to make "subordinate legislation" should be restricted to the existing Byelaw making powers under the 1954 British Transport Commission Act.
- 9.10 In place of these powers, which are inappropriate for a 21st century charitable body, the following powers and duties should be established:
- Legal recognition of the homes of boat dwellers on a par with that enjoyed by house dwellers.
 - Statutory protection of boat dwellers from harassment and unlawful or summary eviction, of the same magnitude as the protection enjoyed by house dwellers, applicable to all boat dwellers on inland and coastal waters, whether or not they have a permanent mooring.
 - Clarification that the test for compliance with s.17(3)(c)(ii) of the 1995 British Waterways Act is as intended by Parliament, namely, whether the boat has remained in one place for longer than 14 days without good reason.

- Explicit recognition that boat dwellers without permanent moorings are classed as travellers for the purposes of s.225 of the 2004 Housing Act; the 2010 Equality Act; the Human Rights Act and the EU requirement placed on the UK to draw up a national plan in 2011 to ensure that every homeless traveller has access to suitable accommodation.
- Security of tenure for mooring holders on a par with that enjoyed by the tenants of houses.
- Statutory protection from increases in boat licence fees and mooring fees on a par with that enjoyed by the tenants of social housing in respect of rent increases.
- The New Waterways Charity explicitly classified as a housing authority.

9.11 The charitable purposes of the New Waterways Charity should include:

- The relief of poverty;
- The protection of the homes of boat dwellers and
- The provision of waterway space for boat dwellers to both travel in without permanent moorings and to keep their homes permanently moored.

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(Third Revision)

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The National Barge Travellers Association provides support and advice to itinerant boat dwellers on Britain's inland and coastal waterways.

REFERENCES

(copies can be provided on request)

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