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Sent by email to
ian.rogers@canalrivertrust.co.uk

Dear Ian

LEVEL 1 COMPLAINT – ENFORCEMENT POLICY FOR BOATS WITHOUT HOME MOORINGS

This is a Level 1 complaint in line with CRT's complaints procedure. We have serious concerns about the policy regarding enforcement of section 17(3)(c)(ii) of the British Waterways Act 1995 effective from 1st May 2015. These concerns are as follows.

The retrospective application of the new policy

It is apparent that boaters without home moorings whose 12-month licences are due for renewal after 1st May 2015 are having renewal of their licences refused for the full 12 months as the result of boat movements that occurred before the policy came into effect. In other words, the policy is being applied retrospectively. To apply the policy retrospectively, when it is obviously not possible to remedy any past defect, is unfair and unjust. CRT's announcement on 13th February 2015 that its new policy would be effective from 1st May 2015 gave no indication that the policy would be applied to boat movements that occurred before 1st May 2015.

To apply the new policy retrospectively deprives boaters of the ability and opportunity to remedy any alleged non-compliance in time to rectify the situation and thus be in a position to renew their boat licence for the full 12 months. The only way that a new policy of this nature could be applied fairly and justly would have been to introduce it with a full 12 months advance notice.

In applying the policy retrospectively CRT has violated the rights of boat dwellers without home moorings under Article 6 of the European Convention on Human Rights (ECHR) by depriving them of the opportunity to renew their licence for 12 months without a fair trial. CRT has violated their rights under Article 8 ECHR by consequently failing to respect their homes as the result of the threat that their homes will potentially be unlicensed after 6 months and therefore at risk of being seized under Section 8 of the British Waterways Act 1983.

The majority of boat dwellers without home moorings who have contacted the NBTA following non-renewal of their licence for the full 12 months have had the same range of movement during the 2014-2015 licence as during the 2013-2014 licence, and their licences were renewed on the same basis in the years before 2013. In addition they were not served with any enforcement notices in previous years and did not stay longer than 14

days in any one place without this being communicated to CRT/ BW and accepted by you.

In renewing their licences on this basis in previous years, in some cases over more than 10 years prior to 2015, CRT was confirming that it was satisfied that their boats would be used bona fide for navigation throughout the period of the licence in compliance with Section 17(3)(c)(ii) of the British Waterways Act 1995. The law has not changed since 1995 and therefore they had a legitimate expectation that CRT would renew their licences in 2015 on the same basis. CRT has thus breached their legitimate expectations.

Application of the new policy without adequate notice to remedy any alleged defects in compliance

The boaters who have contacted the NBTA about this issue have stated that they have been given 6 weeks notice or less of the refusal to renew their licences for the full 12 months. In some cases CRT has given no notice at all, with boaters only finding this out when they actually try to renew the licence for 12 months. To give such short periods of notice that their licences will not be renewed has deprived them of any opportunity to remedy the alleged defect in time to be able to renew their boat licences for 12 months. This is unfair, unjust and is not acceptable.

CRT's normal practice is to send boaters without home moorings a series of warning letters over a period of time (Pre-CC1, CC1, CC2 and CC3) before refusing to renew or terminating the licence. In failing to do this, CRT has further breached their legitimate expectations.

Many of the boaters who have contacted the NBTA have stated that if CRT had informed them with adequate notice, that is, at the beginning of their 12-month licence period starting in 2014, that CRT required their boat movements to change in order for their licences to be renewed for 12 months in 2015, they would have been able to remedy any defect in order to avoid a refusal to renew their boat licences for 12 months in 2015.

Note 7 of the Guidance for Boaters Without a Home Mooring states:

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Enforcement of the legal requirements will be based on observations by the Trust. If initial observations indicate insufficient movement to meet the legal requirements, the boater(s) will be advised why the observed movement is considered insufficient and be asked to keep adequate evidence of future movements. Failure then to meet the movement requirements, or to provide evidence of sufficient movement when requested by the Trust, can be treated as a failure to comply with s.17 of the 1995 Act. After fair warning the boat licence may then be terminated (or renewal refused).

The letter of 2nd March 2015

The only communication that CRT sent to boaters without home moorings regarding this issue was a letter dated 2nd March 2015. This letter gave all boaters without home moorings notice of a change of policy which would be effective from 1st May 2015. The letter did not make it clear that boat movements before 1st May 2015 would be taken into account when applying the new policy. Therefore boaters without home moorings believed that they had around two months advance notice of a possible need to make changes to their cruising pattern.

The letter did not give any indication of whether CRT considered any individual boater's cruising pattern to fall into either of the categories that would lead to the non-renewal of their licence. In addition, the letter stated that "the majority of boaters who declare that they will continuously cruise do what is required without any problem". Given that CRT and BW had renewed many boat licences every year going back many years, boat dwellers without home moorings had a legitimate expectation that the movements of their boats would not be deemed to fall into either of the very vague categories of non-compliance specified in CRT's letter of 2nd March. As a result they had every reason to assume that the movements of their boats would be considered to "do what is required without any problem" as the letter stated.

Allegations without providing evidence

Boaters who have had renewal of their licences for 12 months refused have not been given any evidence for or reason why CRT considers their boat movements do not meet CRT's requirements. Further, CRT has not provided them with any information regarding what cruising pattern CRT considers is sufficient to meet its requirements if they have asked for this. CRT's failure to do either of these things is contrary to one of the fundamental principles of English law that the law must be accessible, intelligible, clear and predictable, so that the citizen knows when his actions would be unlawful (see *Moore v British Waterways* [2013] EWCA Civ 73 paragraph 39 and *Lord Bingham: The Rule of Law* [2010]).

In addition we have been contacted by a number of boaters who have either been told by CRT that their own evidence of their boat movements will not be accepted by CRT, or that CRT is not prepared to provide them with its records of its sightings of their boat in time to have any errors corrected within the time limit for purchasing a 12-month licence with the prompt payment discount applied and/or without incurring a late payment charge. To give 6 weeks (42 days) notice or less of non-renewal for 12 months and at the same time refuse to provide the boater with CRT's sighting records in less than 40 days is a further violation of their rights under Article 6 ECHR. This is not only unfair, unjust, and downright malicious. It is also profiteering on the part of CRT and as such breaches the Consumer Protection from Unfair Trading Regulations 2008.

Refusal to take into account boat movements in the last 6 weeks of the licence

The NBTA has been contacted by a number of boaters without home moorings either who travelled considerable distances in the last few weeks of their licence or who, when they were given 6 weeks notice that their licence would not be renewed, changed their travel patterns and travelled further. However these boaters have been prevented by CRT from renewing their licences for 12 months even though their boat movements meet the distance standard stated by CRT on 6th March 2015.

No rights for CRT outside legislation

Section 17(3)(c)(ii) of the British Waterways Act 1995 does not specify a minimum distance that must be travelled in order to comply with the law. Therefore in applying a minimum cruising distance or range as a criterion for deciding whether or not to renew a boat licence for the full 12 months, CRT is acting unlawfully. Indeed HHJ Halbert's judgement in *CRT v Mayers* (2013) stated, in agreement with HHJ O'Malley, that it was the purpose of use not the extent of the movement that defined whether or not a boat was being used bona fide for navigation and that the requirement to use the boat bona fide for navigation set out in

Section 17(3)(c)(ii) is temporal not geographical. Judge Halbert observed that depending on the purpose of the journey, a boat that travelled repeatedly between two points sufficiently far apart to constitute different places would be used bona fide for navigation.

Contradictory statements about cruising distances and how enforcement will be carried out

CRT has made contradictory statements about the criteria used to decide whether a boat licence will be renewed for the full 12 months after 1st May 2015. On 6th March 2015 CRT stated 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”.

However, in the meeting on 19th January 2015 between boating user groups (excluding NBTA), Denise Yelland gave a presentation of CRT's planned three-step approach to enforcement as follows and invited the user groups to approve this process:

Step 1. Refuse to licence the 16% of boaters without a home mooring that move less than 5km.

Step 2. Refuse to grant a full term licence for the 50% of boaters without a home mooring that move more than 5kms but less than 20km until they show a pattern of movement that takes them into the third step.

Step 3. Those that move more than 20kms will not generally attract enforcement attention.

This corresponds to the categories in the letter sent to all boaters without a home mooring dated 2nd March 2015. The two statements are contradictory, especially given that Denise Yelland's presentation on 19th January was the result of extensive planning within the enforcement team over the previous year whereas the statement on 6th March appeared to be an unplanned and hasty response to the many boaters who expressed concerns about how they would be able to tell whether or not they would be complying.

Denise Yelland's statement on 19th January that “Those that move more than 20kms will not generally attract enforcement attention” is consistent with the revised Guidance for Boaters Without a Home Mooring which refers to the *BW v Davies* judgement (March 2011 in Bristol County Court) in which HHJ O'Malley found that Mr Davies' use of his boat was not bona fide for navigation given that he usually travelled the 10 miles (16km) between Bath and Bradford on Avon. The statement made by CRT on 6th March is not consistent with the Guidance for Boaters Without a Home Mooring.

To remedy our complaint:

1. Abandon the practice of applying the new enforcement policy announced on 13th February 2015 to boat movements that occurred before 1st May 2015.
2. Provide adequate warning of any alleged non-compliance so that boaters can remedy any alleged defects in time to renew their licence for the full 12 months.
3. Extend all pro-rata 3 and 6 month licences to 12 months immediately and give every boater without a home mooring 12 months notice of the implementation of this and any

other new policy regarding enforcement so that they are able to remedy any alleged defect in compliance with section 17(3)(c)(ii).

4. Withdraw the statement of 6th March 2015 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” on the basis that it is not consistent with the enforcement framework planned by Denise Yelland and presented to user groups on 19th January 2015.

Thank you. We look forward to your reply within 15 working days.

Yours sincerely

Pamela Smith
Chair
National Barge Travellers Association