

National Bargee Travellers Association

Response to Canal & River Trust (CRT) Draft Online Moorings Policy consultation

Temporary mooring on the towpath

1. We propose an amendment to the policy regarding mooring on the towpath to the effect that the creation or construction of short-stay visitor moorings should not under any circumstances reduce the length of usable 14-day mooring space and that whenever new short-stay moorings of less than 14 days are created, any loss of 14-day mooring space should be made up by dredging at the edge and bank improvement nearby. We also recommend that the length of 14-day mooring space that has been lost over the last 10 years to the creation of short-stay visitor moorings should be assessed and reinstated. This would be consistent with CRT's duties as a body that exercises statutory powers to respect and not interfere with the Article 8 ECHR rights of boat dwellers, who typically need to stay for 14 days in any one place.

2. We recommend that the policy of imposing charges and extended stay charges for short stay moorings be abandoned on the basis that it is unlawful. CRT has not provided the boating public with any convincing evidence either that it has powers to impose these charges or that it has any power to set mooring time limits of less than 14 days. Any adherence to short stay mooring times is purely for consideration to other boaters. In the House of Commons Select Committee on the British Waterways Bill in 1993-94, BW was either denied or withdrew clauses in the Bill that would have enabled it 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.

3. 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 original canal companies provided and were enabled to make charges for under the original canal Enabling Acts (such as the 1793 Grand Junction Canal Act). However, 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, and this is still the case today. Case law further underlines the principle that a body that exercises statutory powers can only make a charge or impose a penalty where it has express authority in statute to do so. See, for example *Swan Hill Developments v British Waterways Board* [1997] EWCA Civ 1089; *Proprietors of the Stourbridge Canal v Wheeley* [1831] 2 B & Ad 792; *McCarthy and Stone (Developments) Ltd v Richmond upon Thames LBC* [1989] UKHL 4; *Attorney-General v Wilts United Dairies Limited* [1922] 38 TLR 781 (HL).

Effect of online mooring reduction policy

4. Given that at least 587 online permanent moorings have been removed since 2007, mainly by natural wastage, the space created by the removal of these permanent moorings should be utilised for 14 day mooring. This is because in many parts of the waterways the depth of water and condition of the bank is not adequate for boats to moor to the bank, and the mooring space that has been vacated has in most cases been piled, creating an adequate depth of water in places where adequate depth for mooring on the towpath is scarce.

Permanent moorings

5. The NBTA notes that in May 2015 CRT declared an unlawful and punitive policy towards boats without a home mooring of refusing to re-license all boats that “don’t move ... far enough or often enough” to meet its Guidance for Boaters without a Home Mooring – unless they take a permanent mooring, and 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”.

6. Since that date, many more Bargee Travellers have had their licence renewals restricted to 6 months or less; refused altogether unless they take a home mooring; or have been issued with Section 8 and 13 notices requiring the removal of their boat from the waterway. In this context, some of our members have been forced to seek a home mooring.

7. Permanent residential moorings that boat dwellers can legally live on are in very short supply. Where they exist, they are very expensive (up to £25,000 per year in London). A majority of marinas will turn boat dwellers away if it is known they live on their boat, or evict them for doing so. Over 90% of permanent moorings are non-residential (“leisure moorings”). CRT knows that if boat dwellers live on leisure moorings they risk having planning enforcement action taken against them for unauthorised residential use. In London and the south there is a severe shortage of moorings and mooring fees are vastly inflated. Many of CRT’s own directly managed moorings are priced using an auction system where the highest bidder wins. Some private moorings have waiting lists of 9 years and more.

8. The NBTA is aware of a number of cases where boat dwellers have taken a mooring due to CRT’s restriction or refusal to renew their licence without a permanent mooring, and CRT has continued enforcement action on the grounds that their mooring is “not a valid home mooring” even though in many cases, these moorings have existed for decades. This is despite the fact that the rights granted to land owners on the artificially constructed canals to build and use wharves, quays and places for boats to “lie, turn in and pass each other”, without payment to the navigation authority, in the original Enabling Acts have not been repealed, and despite the fact that on rivers, the riparian owner owns the bed of the river to the centre and thus can do what they choose with their riverside land, including having boats moored there, subject to planning controls.

9. For CRT to compel these boat dwellers to seek a permanent mooring, yet to continue enforcement action against them when they do find a mooring on the grounds that it is “not a valid home mooring” is not only unlawful, it is unjust and vindictive.

10. In addition to being unjust and vindictive, this policy is contrary to CRT’s Charitable Objects, in particular to Article 2.6.1 “the improvement of the conditions of life in socially and economically disadvantaged communities in such vicinity” in that it intentionally exacerbates the conditions of life for the community of boat dwellers in question, who are socially and economically disadvantaged compared to the rest of the population, by making them homeless.

11. Furthermore, paragraph 6.4.3 of the CRT Standard Mooring Agreement Terms and Conditions prohibiting the use of the mooring as a sole or main residence without the prior written consent of CRT means that CRT directly managed moorings are effectively untenable for boat dwellers. This clause should be removed. As CRT states in paragraph A(12) of its Policies for Moorings Along the Banks of Our Canals and Rivers, “It is for the

Local Planning Authority to establish that a mooring is being used as a primary residence, and whether planning enforcement is necessary” and therefore it is not CRT's responsibility to enforce planning law.

12. Whilst the NBTA welcomes the removal of the automatic reduction of online moorings when new offline mooring provision is created in CRT's revised online mooring policy, we believe that this does not go far enough and CRT should end its policy of refusing to recognise moorings as “not a valid home mooring”, in accordance with the Enabling Act rights of land owners and should remove paragraph 6.4.3. from its Standard Mooring Agreement Terms and Conditions.

Housing and Planning Act 2016

13. The criteria for consideration of new online moorings should include how moorings would contribute to the fulfilling the duties of local authorities under Section 124 of the Housing and Planning Act 2016 to “ consider the needs of people residing in or resorting to their district with respect to the provision of ... (b)places on inland waterways where houseboats can be moored” in the context of both permanent moorings and temporary moorings.

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