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**NATIONAL BARGEE TRAVELLERS ASSOCIATION**

**CONSULTATION SUBMISSION TO  
COMMISSION TO REVIEW  
CANAL & RIVER TRUST BOAT LICENSING**

**21ST APRIL 2025**

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## EXECUTIVE SUMMARY

This consultation response is from the National Barge Travellers Association (NBTA). The NBTA is a volunteer organisation formed in 2009 that campaigns and provides advice for Barge Travellers (itinerant boat dwellers) on Britain's inland and coastal waterways. The NBTA is the only national organisation in Britain dedicated to upholding and defending the rights of itinerant boat dwellers. The NBTA has over 2,000 members, who live on all the major navigation authorities' waterways and beyond. The NBTA Casework Team deals with approximately 200 to 300 individual cases each year. The navigable inland waterway system in Britain is home to an estimated 15,000 to 50,000 Barge Travellers. There are as yet no accurate statistics for the number of people living on boats, either with or without a permanent mooring in the UK.

England is a country where everything is permitted except what is expressly forbidden. There is no law against living nomadically on a boat, or against doing so whilst employed or whilst having children at school. These rights must therefore be accommodated. Rights conferred by the European Convention on Human Rights, the United Nations Convention on the Rights of the Child, the Equality Act, and the British Waterways Acts must be upheld.

In the transfer of British Waterways (BW) to the Canal and River Trust (CRT) in 2012, Parliament gave undertakings to the NBTA in the Lords and the Commons that the rights under *inter alia* the Human Rights Act, the Equality Act and the British Waterways Act 1995 would be upheld by CRT and not interfered with. If CRT attempts to interfere with these rights, it will be in contempt of Parliament.

CRT claims that managing an increase in boats without a home mooring is the basis for the Boat Licence Review. CRT has no accurate data on the number of boats without a home mooring in 1995. Population data since 2016 indicates no growth. The latest data shows a decrease.

There is thus no justification for significant legislative or policy change. This must therefore be driven by some ulterior motive. CRT lays the blame for its own shortcomings at the feet of the itinerant boat dwelling community, whereas the "problem" is one of CRT's own making, stemming from its persistent *ultra vires* interpretation of the 1995 Act.

CRT ignores the prevalence of itinerant boat dwellers with disabilities in its policymaking. In stark contrast, there is prolific evidence cited in this paper of overt discrimination by CRT against people with disabilities. CRT routinely chastises and operates policies adverse to working people. This is contrary to Government policy and legislation in favour of growth. CRT also demonstrates entrenched persecution and bigotry towards the least well-off.

This paper studies the positive outcomes stemming from the presence of the itinerant boat dwelling community on CRT's waters, including in relation to maintenance (keeping the canal system "moving" – in contrast to the assertions of CRT); safety for pedestrians with direct onward benefits for tourism and leisure users; community leading to social cohesion whereas CRT is executing best efforts to extinguish this demographic; and keeping towpaths "public" in contrast to CRT's agenda to privatise its estate. This paper also discusses the converse: the abject failure of CRT to maintain the canal system which is

falling into neglect, and the policy-driven objective to close services that are vital to itinerant boat dwellers, including waste disposal, sewage disposal and the availability of potable water.

This paper details an in-depth legal analysis of the operation of the Select Committee that scrutinised the British Waterways Bill of 1990: the effect of the 1995 Act and of subsequent judgments. In particular, a regular theme is that CRT is minded to routinely seek to promulgate policies that are contrary to authorities established in judgments. CRT also avoids litigation that might prove the meaning of an element of the 1995 Act that is adverse to this policy objective.

Detailed evidence is given of how CRT enforcement is carried out in an increasingly opaque and obfuscated manner.

CRT has been considering a “third” type of licence (noting that there is only one type of licence with two modes). CRT has previously received legal advice that this type of licence was *ultra vires*, unworkable and, in any event, did not meet the essential policy objective.

The NBTA concludes, in its detailed submission, that, in fact, there is no need for new legislation and if CRT operated its enforcement policies in accordance with what Parliament intended in the 1995 Act, many of the “problems” that CRT claims exist would be disposed of.

CRT has been covertly developing and is seeking to promulgate a Transport and Works Act Order (TWAO). This process has been diametrically opposed to the principles of open government and democratic inclusion. The basis for this nefarious activity appears to be in order to subvert the rights of the 1995 Act enjoyed by itinerant boat dwellers and to drive itinerant boat dwellers from its waterways. In stark contrast, the NBTA has been working with a number of Parliamentarians on a “Bill of Rights” for itinerant boat dwellers.

The evidence surrounding the systematic abuse and persecution of people with disabilities is laid out. Reference is also made to the evidence surrounding systematic Human Rights abuses by CRT. The Commission is reminded of its obligation to conduct an Equality Impact Assessment and a Human Rights Impact Assessment, neither of which are specified in the Terms of Reference.

The Terms of Reference refer to “evidence to be supplied to the Commission by CRT”. The NBTA recommends a schedule of evidence to seek and a list of questions for the Commission to put to CRT.

This paper discusses at some length the evidence that leads to the presumption that CRT is failing in its essential objective, that public support for CRT has faltered and in fact, CRT and its administration should be restructured to ensure true public accountability.

The *bona fides* of the Consultation process instigated by the Commission has been analysed by an academic who lectures in research methodology and found to be grossly lacking. The NBTA lays out these findings.

This paper also calls into question the validity of the Commission in view of the misrepresentation of CRT in laying down the Terms of Reference.

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## **1. INTRODUCTION**

- 1.1 This consultation response is from the National Barge Travellers Association (NBTA).
- 1.2 The NBTA is a volunteer organisation formed in 2009 that campaigns and provides advice for Barge Travellers: itinerant boat dwellers on Britain's inland and coastal waterways. The NBTA is the only national organisation in Britain dedicated to upholding and defending the rights of itinerant boat dwellers. The NBTA has over 2,000 members, who live on all the major navigation authorities' waterways and beyond.
- 1.3 The NBTA Casework Team deals with approximately 200 to 300 individual cases each year.
- 1.4 The navigable inland waterway system in Britain is home to an estimated 15,000 to 50,000 Barge Travellers. There are as yet no accurate statistics for the number of people living on boats, either with or without a permanent mooring in the UK.

## **2. PERMITTED UNLESS EXPRESSLY FORBIDDEN**

- 2.1 "England, it may be said, is not a country where everything is forbidden except what is expressly permitted: it is a country where everything is permitted except what is expressly forbidden." (Sir Robert Megarry V.-C. in *Metropolitan Police Commissioner* [1979] 1 Ch 344 at 357C).
- 2.2 What is not prohibited is permitted. If what a person is doing is not a legal wrong, he is entitled to do it. It is necessary in law enforcement to prove distinct breaches of established law. See *Moore v British Waterways* [2013] EWCA Civ 73 at 38-39 and 42; and *The Rule of Law*, Lord Bingham (2010).
- 2.3 There is no law against living nomadically on a boat; no law that an itinerant boat dweller may not be employed; no law that an itinerant boat dweller may not send their children to school.
- 2.4 The law must therefore accommodate these rights. Any changes in the law relating to boat dwellers without a home mooring must be written and read to give effect to the rights of boat dwellers including rights under Common Law, the European Convention on Human Rights, the United Nations Convention on the Rights of the Child, the Equality Act, and the British Waterways Acts.

### 3. UNDERTAKINGS TO PARLIAMENT

- 3.1 Lord Taylor of Holbeach stated on 25th June 2012 in the Grand Committee debate on the Order to transfer British Waterways (BW) to the Canal & River Trust (CRT) that:

*“... the rights of boat dwellers will not be removed or weakened as a result of this transfer order. The Human Rights Act, the Equality Act and the Freedom of Information Act will all apply to the CRT as it carries out its statutory functions. I think that I have covered the point about resident boat owners. Their rights are contained in statute in the British Waterways Acts, not the charity's articles of association.”*

- 3.2 The Waterways Minister Richard Benyon MP stated on 26th June 2012 in the House of Commons debate on the Order to transfer British Waterways to the Canal & River Trust that:

*“The rights of boat dwellers will not be removed or weakened as a result of this transfer order. The Human Rights, Equalities and Freedom of Information Acts will all apply to the CRT as it carries out its statutory functions. On the specific concern of the removal of boats that are used as homes, the CRT will only exercise its powers to remove sunk, stranded or abandoned vessels or vessels moored without lawful authority on the waterways after due process has been followed, including giving any required notice and periods of grace. In response to its most recent representation, I can give the NBT an assurance, on behalf of the CRT, that the CRT will not exercise its powers to remove a vessel that is thought to be someone's home without first taking the matter to the county court and obtaining a declaration from the court that the removal is lawful.”*

- 3.3 CRT was formed in 2011 and was in existence before the Parliamentary process to transfer BW. The CRT Trustees could therefore have negotiated with Government to amend or repeal parts of the British Waterways Act 1995 if their position was that they did not wish to be bound by parts of the legislation. However, this did not happen and BW was transferred to CRT with Section 17 (3) (c) (ii) of the British Waterways Act 1995 in place.

- 3.4 As Lord Taylor and Mr Benyon stated, the rights of boat dwellers include what is stated in Section 17 (3) (c) (ii) of the British Waterways Act 1995. CRT cannot alter or amend the rights contained in Section 17 (3) (c) (ii) via policy, guidance, Terms and Conditions, byelaws, a Transport and Works Act Order or other primary or secondary legislation. If it did so, CRT would be in contempt of Parliament.

Appendix 1: Extracts from Hansard, 25th June 2012 and 26th June 2012.

Appendix 2: British Waterways Act 1995.

## 4 DEMOGRAPHIC CONTEXT

- 4.1 Ahead of this licence review, CRT claims that managing an increase in boats without a home mooring is a main reason for its need for Boat Licence Review. CRT cites changes in waterway use since 1995 as context - implying a significant increase in boats without a home mooring since 1995. CRT has no accurate data on boat numbers in 1995 so it is difficult to see how this assertion can be verified. CRT data does however suggest that boat numbers have been level from 2016 to 2023, and in fact, the latest boat count shows a slight decrease.
- 4.2 In its latest boat count, CRT suggests what amounts to a relative increase in boats without a home mooring of about 1%. Especially given the historic contradiction in CRT's figures, this is too minimal to be considered significant, or even a trend, and does not justify significant legislation or policy change. It must be reiterated that given the latest figures showing a 1.4% decrease in the number of boats, CRT may not in fact have a boat management issue, as there may in fact be fewer boats to manage on the waterways.
- 4.3 According to CRT's 2022 Boater Census, 34% to 46% of boaters are disabled. All policies should acknowledge this high percentage. Any increase in cruising range requirements, or introduction of shorter mooring stay periods, will have a negative impact on many disabled boaters. Similarly, policies that displace disabled itinerant boaters from urban areas will also displace many disabled boaters from the support networks and healthcare facilities they require.
- 4.4 Already CRT has increased its short stay moorings in urban areas, to the detriment of disabled boaters who may require longer stay periods due to disability. These CRT policies have already unfairly discriminated against disabled boaters. Increasing cruising range requirements, introducing shorter stay periods, or driving disabled boaters out of necessary urban moorings will discriminate against disabled boaters under the Equality Act 2010.
- 4.5 A similar issue exists for itinerant boaters' families, where access to schools is vital to ensure children's rights to education. For itinerant boat families, access to urban areas is often vital, as this allows proximity to a school throughout a significant enough proportion of their cruising range, alongside suitable public transport to get there. Itinerant boating does not combine well with car ownership, and many non-urban canals can involve very poor access to public transport. If itinerant boat families are not able to moor in urban areas, or base their cruising range around schools when necessary, many will be displaced from vital access to schools.
- 4.6 Many itinerant boaters work to support themselves, and in many instances this work requires access to a specific locality. It is perfectly possible for itinerant boaters to work within a specific locality yet live itinerantly, and in fact, many do so. Any policy that prevents them from maintaining access to the locality of their workplace may have a significant impact on their employment, or even make their employment impossible. It is vitally important that itinerant boating is available to working people, otherwise this would be a gross discrimination

against working people and potentially a violation of the Equality Act regarding the protected characteristic of age.

- 4.7 It is also important to note that the itinerant boating population includes significant poverty, with many boaters protected from homelessness by no more than a comparatively cheap fibreglass boat. This also applies to the significant number of disabled boaters, as it is well documented that across the UK (and the world), disabled people are generally at a significant financial disadvantage. The financial means of itinerant boaters must be considered in any boat licensing review.
- 4.8 It is also worth noting CRT mentions the issue of unlicensed boats in the context of the licence review. Much of this issue relates to poverty and other broader social issues that are beyond NBTA or even CRT to solve. It is important to support these boat dwellers, and it is also important not to use this issue as justification to damage an entire itinerant boating community.
- 4.9 Any policy or legislation that increases cruising range requirements, shortens mooring stay periods, displaces itinerant boaters from urban areas or makes itinerant boating unaffordable not only makes the livelihoods and homes of many current itinerant boaters impractical or impossible - it also makes itinerant boating impractical or impossible for future generations of families or disabled people and many others.
- 4.10 A key point here is that contrary to the Terms of Reference of CRT's Licence Review, there have always been itinerant boaters who cruise within a specific locality for the exact reasons given above, and legislation has been put in place to protect these itinerant boaters' rights.

## 5 POSITIVES – WHY THE WATERWAYS ARE BETTER WITH ITINERANT LIVE-ABOARD BOATERS

- 5.1 **Maintenance:** Itinerant boaters keep the waterways moving. CRT's assertions that itinerant boaters pose an operational risk misrepresent the significant benefits itinerant boaters bring to maintaining the canals. Itinerant boaters provide steady use throughout the year of a system that is built to be used. Without this steady use, canal locks, mechanical infrastructure, sluices and water systems would stagnate ahead of the summer's leisure boating season (work involved in clearing and renewing unused locks alone would be immense). Additionally, itinerant boaters continually use the canals and provide CRT (and local authorities) with early reports and updates on issues before they become more significant and costly (many instances could be cited here).
- 5.2 **Safety:** Safety is significantly increased with itinerant boaters living along sections of waterway that would otherwise be remote. Many parts of the canal that were previously 'no-go' areas due to lack of community presence and crime are now thriving because of the efforts of the itinerant boating community. Apart from providing a constant presence and security, the itinerant boating community is notoriously friendly and inviting to all canal users, with many local residents commenting on the comfort and security they bring. This has been

furthered by itinerant boater-led initiatives such as Canal Watch, a watchdog initiative which even CRT itself promoted due to its success. It is exactly because of the itinerant boating community that these areas are now thriving hubs of tourism and leisure, with some particularly relevant comments from women saying these areas are now safe even for running alone at night.

- 5.3 **Community:** Promoting community cohesion and encouraging safe and strong communities is recognised as good practice amongst all UK local authorities. The boating community is a strong, inclusive and actively engaged community and should be supported, promoted, and celebrated.
- 5.4 **Public Access:** Towpath moorings are, as a rule, currently publicly available. Anyone can legally obtain a boat licence as long as their boat fulfils specific safety and insurance criteria. They can then moor this boat on almost any towpath in the country during the course of their navigation. The towpath is effectively publicly available mooring. The itinerant boating community are vital in ensuring this towpath remains public by demonstrating that it is a publicly utilised facility that should not be made private in any way.
- 5.5 **Tourism:** Boaters act as unacknowledged tourist guides when moving boats around. “Gongoozlers” (members of the public who watch boaters) frequently watch and ask boaters all about the canals and how locks work. We politely indulge them by explaining much of the workings of the canals and their history.

## 6 CRT’S DEFINITION OF “THE PROBLEM”

- 6.1 CRT has defined as a ‘problem’ in its Terms of Reference for the Commission “a significant and growing number of those boats licensed as a continuous cruiser cannot reasonably be said to be genuinely navigating throughout their licence period and, instead, remain in one relatively small part of the network for most if not all of the time, to live and work in that area without obtaining a home mooring.”
- 6.2 The assertion that remaining within “one relatively small” area of the canal network to maintain proximity to employment, family, or educational institutions constitutes a failure to “genuinely navigate” is unfounded. This contention has been explicitly rejected by two separate County Court judgments: *British Waterways v Davies* 2011 (unreported, Bristol County Court) and *Canal & River Trust v Mayers* 2013 (unreported, Chester County Court).
- 6.3 Relevant legislation, that is, Section 17 (3) (c) (ii) of the British Waterways Act 1995, stipulates that a boat must be used “*bona fide* for navigation throughout the period for which the consent is valid,” with a restriction against continuous stationary periods exceeding 14 days, or a longer period deemed reasonable under the circumstances. Notably, the legislation does not prohibit navigation within a specific geographical area of the network.
- 6.4 During Parliamentary discussions concerning the enactment of this legislation, the Select Committee acknowledged the existence of boaters who reside within a limited section of the canal network. This practice was not deemed to be in

contravention of the intended purpose of the legislation. In any event, CRT's acknowledged inability to differentiate between liveaboard vessels, holiday boats, weekend cruisers, and those with home moorings renders any assessment of usage patterns highly imprecise. This has been made apparent by Freedom of Information Act (FOI) requests: FOI 125.22 and FOI 81.24.

### ***Legal background and case law***

6.5 The NBTA has obtained the following Advice from a senior barrister regarding Section 43 (3) of the Transport Act 1962 and Section 17 (3) (c) (ii):

6.6 **Section 43 (3) of the Transport Act 1962:**

*"If the CRT seek to impose a requirement in a licence that is expressly forbidden by another piece of legislation, that would be unlawful".*

6.7 **Section 17 (3) (c) (ii):**

*"I don't see any authority in the section itself for a minimum level of distance to be covered. What matters is bona fide navigation, and not staying in one place for more than 14 days. So a boat dweller can navigate as much or as little as they choose (subject to it not being so little that a reasonable person could say that it was not really bona fide navigation at all)".*

6.8 **House of Lords Report 1991**

The House of Lords Special Report of the Select Committee on the British Waterways Bill 1990, published 3rd July 1991, proposed an amended version of the clause that would become Section 17 (3) (c) (ii) of the British Waterways Act 1995.

6.9 The House of Lords Special Report proposed in Appendix II (page 13) an amendment to the effect that Clause 13 (c) (ii) should read:

*"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 in any one place for more than 14 days in any calendar year".*

6.10 This proposed amendment did not reach the final statute. There is no requirement in Section 17 (3) (c) (ii) that specifies that a boat without a home mooring must not return to any one place within any calendar year or other time period (see the wording of Section 17 (3) (c) (ii) above).

6.11 The amendment of 1991 would have amounted in practice to a requirement for a minimum range, but it does not appear in the final Act of Parliament. If the amendment had been included, given that the distance between places is at least one mile, boats without a home mooring would have been required to travel a range of at least 26 miles every year. However, the amendment was dropped, and the Act was passed without any specified range or distance and

without any “no-return-within” periods that would have prevented boaters going back to places they had visited within a given period.

6.12 **House of Lords and House of Commons Select Committees 1991 - 1994**

House of Lords Select Committee on the British Waterways Bill Day 1, 1 May 1991 (Minutes of Evidence page 44):

6.13 **Lord Thomas of Gwydir:** *Could I ask one question, which may not be relevant and probably just shows my ignorance? What is meant by navigation? What is "bona fide" use of navigation?*

6.14 **Mr Lockhart-Mummery [for British Waterways]:** *My Lord asks a question which is not of law, but is one depending on the circumstances of the case.*

6.15 **House of Commons Select Committee on the British Waterways Bill Day 6, 1 July 1993 (Minutes of Evidence page 19):**

**Mr Dodd [for British Waterways]:** *I would be happy to have no period mentioned at all and rely upon the expression "bona fide used for navigation". This [the 14-day limit] is an attempt to clarify in the interests of boaters just what we reasonably mean by "bona fide used for navigation"...*

Ibid, page 20:

**Mr Dodd:** *With respect to the period, we were trying to respond to the test for "bona fide navigation" to give some measure of protection to a boater in those circumstances, so that he or she would be clear in their mind as to the point at which he would begin not to be regarded by British Waterways as using the boat bona fide for navigation.*

Ibid, page 24:

**Mr Dodd:** *The 14 days comes, as I see it, essentially as a guidance of definition of what is meant by bona fide navigation.*

6.16 **Halsbury's Rules of English Law**

The British Waterways Acts of 1971, 1983 and 1995 are Private or Local Acts of Parliament. This is to be distinguished from a Private Member's Bill or Act. Paragraph 1497 of Halsbury's Rules of English Law Volume 44 deals with the interpretation of Private Acts:

*"Where there is any real doubt as to its meaning, a Private Act must be construed strictly against the promoters. It follows that, as between the promoters and members of the public, a Private Act shall be construed liberally in favour of the public, so that 1) Clauses to preserve general rights will be widely interpreted..."*

6.17 This implies that if there is a dispute between the promoter (British Waterways, now CRT) and an individual boater regarding the meaning of Section 17 (3) (c)

(ii), a Court should interpret the legislation liberally in favour of the public, in this context the boater.

## 6.18 **Case law**

Weeks v Ross [1913] 2 KB 229;

Crown Estate Commissioners v Fairlie Yacht Slip 1979 SC 156, [1978] Scot CS CSIH\_3; and

R v Goodwin [2006] 1 WLR 546

all provide definitions of "navigation".

6.19 In Weeks v Ross, the Court held that a passenger pleasure trip boat that travelled back and forth along a mile and a half of river and canal at Exeter was navigating. Bray J stated:

*"In my opinion there could be no other proper finding than that the vessel was used for navigation".*

6.20 In Crown Estate Commissioners v Fairlie Yacht Slip, the Court of Session held that navigation is:

*"the action or practice of passing on water by vessels of all kinds", [concurring with the Oxford Dictionary definition of navigation.]*

6.21 In R v Goodwin, the Court of Appeal held that:

*"those authorities which confine 'vessel used in navigation' to vessels which are used to make ordered progression over the water from one place to another are correctly decided."*

6.22 In CRT v Jones [2017] EWCA Civ 135, the Court of Appeal held that a boat dweller had the right under Articles 6 and 8 of the European Convention on Human Rights to have the proportionality of seizing their home compared to the severity of the alleged breach of the law assessed in full by a Court in cases where there are:

*"... continuing genuine disputes as to whether licence conditions have been satisfied or where there are other issues in play, such as questions under the Equality Act 2010 ..."*

6.23 The judgement stated in paragraphs 47 and 48:

*"47. Doing the best that I can, but without wishing to be prescriptive for the future, I can see (on the one hand) that the Respondent's right to obtain removal of a vessel, used as a home, from a waterway may be more easily vindicated by summary process where, for example, it can be shown that the vessel operator has failed to establish that the requisite statutory standards of construction and equipment are met or that the operator has failed persistently*

*to produce evidence of the necessary insurance policy as required by s.17. Equally, summary determination of Article 8 rights against the boat occupier may be possible where there has been flagrant and/or persistent breach of licence conditions which have not been remedied.*

*48. On the other hand, I see more difficulty in summary dismissal, on a preliminary application at the beginning of the proceedings, of a boat occupier's Article 8 rights as being outweighed by the management requirements of the Respondent, in a case where there are continuing genuine disputes as to whether licence conditions have been satisfied or where there are other issues in play, such as questions under the Equality Act 2010..."*

6.24 In *Moore v British Waterways* [2013] EWCA Civ 73, the Court of Appeal held in paragraph 63, quoting Sir George Jessel in *Original Hartlepool Collieries Company v Gibb* (1877) 5 Ch D 713, that:

*"You cannot lay down à priori what is reasonable. You must know all the circumstances."*

6.25 *British Waterways v Davies* (Bristol County Court, 2011) and *CRT v Mayers* (Chester County Court, 2013) both examined the meaning of Section 17 (3) (c) (ii). They are not case law, but in the absence of any judgement on this subject from a Court of Record, they may be persuasive.

6.26 In *CRT v Mayers* HH Judge Halbert held that (see Section 7):

*"The requirement [for bona fide navigation throughout the period of the licence] is temporal, not geographical..." and that:*

*"If a person who lived permanently on his or her boat had specific reason for making repeated journeys over the same stretch of canal between two points sufficiently far apart to be regarded as different places, it would in my view be purposeful movement by water from one place to another and hence "bona fide navigation".*

6.27 HH Judge Halbert stated that he agreed with the judgement of HH Deputy Judge O'Malley in *British Waterways v Davies* that: "The phrase "used *bona fide* for navigation" involves consideration of the purpose of the use, rather than the extent of the movement" but added: "CRT rely heavily on that decision as supporting their position but in respect of the requirement to use a significant part of the network it has the opposite effect".

6.28 Therefore, case law and persuasive judgements support the proposition that "navigation" is not defined by the achievement of a specific range, pattern or distance of travel.

6.29 The case law and Parliamentary evidence cited above demonstrate that CRT is stating a problem that does not exist. CRT is fomenting prejudice against boaters without a home mooring by claiming that they are not complying with the law when they are complying. CRT has created a myth and is using this myth to argue that legislative change is needed when it is not.

Appendix 3: House of Lords Special Report on the British Waterways Bill 1991 (see page 13, under the heading “Clause 13”).

Appendix 4: *British Waterways v Davies* 2011 (unreported, Bristol County Court).

Appendix 5: *Canal & River Trust v Mayers* 2013 (unreported, Chester County Court).

Appendix 6: NBTAs Response to CRT’s ‘Future of Boat Licensing Review – Terms of Reference’.

## **7. BRITISH WATERWAYS BILL 1990**

- 7.1 In the British Waterways Bill 1990, BW originally sought legislation to compel all boats to have a mooring, with criminal fines at the highest level plus a daily escalating fine for anyone found living on their boat without a residential mooring and a Houseboat Certificate.
- 7.2 Following Petitions against the Bill from boat dwellers and other interest groups, Parliament considered that this was far too draconian because it would render large numbers of people homeless. At that time, there were at least 1,000 boats that would have been affected by the proposed requirement for every boat to have a permanent mooring, most of which were lived on.
- 7.3 In Section 17 (3) (c) (ii), BW was left with legislation that it did not expect and had no plans for enforcing. According to Simon Robbins, who wrote the Residential Boat Owners Association’s Petition against the Bill, when the Bill became law, BW did nothing for a few years and then started looking for ways to circumvent Section 17 (3) (c) (ii).

Appendix 7: History of British Waterways Act 1995 and BW/CRT efforts from 1999 to circumvent Section 17 (3) (c) (ii).

Appendix 8: British Waterways Bill 1990.

## **8. CRT AND MISREPRESENTATION OF THE 1995 ACT**

- 8.1 CRT asserts in 2.2 of the Terms of Reference for the Commission the myth that Section 17 (3) (c) (ii) was included only to cater for a small number of people who cruised extensively. The Terms of Reference state that the British Waterways Act 1995:
- “...first introduced the current 2 categories of boat licence based on home mooring or continuous cruising, the latter intended to cover a small group of truly nomadic boaters who navigated continuously around the network, typically carrying and delivering goods as their predecessors had done for over 100 years, and successfully petitioned Parliament in the bill state [sic] of the 1995 Act to remove their need to obtain a home mooring.”*
- 8.2 This is not true. Firstly, the term “continuously” to describe navigation habits was not used in any of the Petitions against the British Waterways Bill of 1990.

- 8.3 Secondly, “continuously” in Section 17 (3) (c) (ii) refers to the number of days that a boat licensed under that section may remain in any one place under normal circumstances. “Continuously” does not refer to the time spent navigating, or to the geographical extent of the navigation.
- 8.4 Thirdly, the boaters who petitioned against the 1990 Bill were not “typically carrying and delivering goods”. They were boaters who did not have a permanent mooring, who followed a wide variety of navigation patterns due to their differing personal circumstances.
- 8.5 Petitioners against the Bill included the Frog Lane Association of Boaters, Brentford Boaters Association, Canals in Hackney Users Group, Jonathan Kent and 24 others, Oxford, and the Residential Boat Owners Association.
- 8.6 The Select Committees that dealt with the Bill heard evidence that some boaters who did not have a permanent mooring were retired people with no ties, travelling around the entire canal system. However, others were employed in fixed locations; some were self-employed. Some hardly moved in some years and travelled a vast mileage in other years. Some travelled and worked in different places. Some had children at school. Some had elderly parents they needed to stay close to. Some stayed in one place long-term. Some cruised within a limited area. Some cruised in summer but not in winter.

For example:

**House of Commons Select Committee on the British Waterways Bill Day 13, 2 November 1993.**

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*“Ms Christianson (Petitioner against the Bill): ... You have heard much from British Waterways about the trouble they have had with “illegal houseboats” - their term - in Islington. In our eyes, they were licensed pleasure boats on which people happened to live, and they neither broke the law or were totally static.*

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**Chairman:** *So in this moratorium, if we refresh ourselves, they actually said, “We have to regularise this. You have a period of time to register as an unauthorised houseboat”. Yes?*

**Ms Christianson:** *Yes.*

**Chairman:** *And if you do not, then you are regarded as a pleasure boat and you move about.*

**Ms Christianson:** *That is right. That was the only other option left. Clearly that does in the main suit elderly people who have usually sold their houses and moved on to a boat and can cruise continuously, so they are very happy about that clause. However, as I say, the very large amorphous category of those of us who have jobs, children at schools and so on, cannot afford to cruise*

*continuously and/or we are in boat yards but may not always be able to stay in these boat yards, and we are not part of the moratorium. We were simply told when we contacted people not to join.”*

## **9. NO CHANGE IN DEMOGRAPHIC**

- 9.1 The issues that CRT raises in the Terms of Reference for the Commission were examined in forensic detail by Parliamentary Select Committees in 1991 to 1994. There is no need to examine these issues again because although the numbers may have changed, the demographic make-up of the community of boaters without a home mooring has not changed. This community is still made up of working people employed at a fixed place of work; self-employed people; families with school age children; people who are caring for elderly relatives; people with health care needs; and retired people with no ties.

Appendix 9: newspaper article from 1975, Leamington

Appendix 10: Extracts from the Minutes of Evidence of the House of Lords and House of Commons Select Committees on the British Waterways Bill, 1990 to 1994.

## **10. CRT AND MISREPRESENTATION OF POPULATION DATA**

- 10.1 CRT frequently asserts that there are more boats on waterways now than there ever were in the heyday of commercial canal carrying. This is not true. According to George Smith (*The Canal Boatmen 1760-1914*, Harry Hanson, p.123), there were 80,000 to 90,000 boats on the inland waterways in 1875. This would have included not only boats carrying cargo for long distances, but also short distance day boats, passenger boats and pleasure boats, noting that many of the canal enabling acts included a concession allowing the owners of the land the canal was built through to keep pleasure boats free of charge.
- 10.2 In 1875, there were around 500 more miles of waterways than there are now, but there were no off-line marinas.
- 10.3 Today, there are in the region of 35,000 licensed boats on CRT waterways. If there was space for 80,000 to 90,000 boats in 1875, noting that apart from the relatively small number of fly boats they would have been tied up somewhere every night, there is plenty of room for 35,000 boats, of which a minority of approximately 7,300 have no home mooring.

## **11. CRT AS ROOT CAUSE OF THE “PROBLEM”**

- 11.1 The ‘problem’ as defined by CRT is of BW and CRT’s own making. The origins are in BW’s failure to enforce the 14-day limit in the years immediately after the 1995 Act became law. This irresponsibly continued the mischief that the 1995 Act was intended to remedy, namely, boats settling on the towpath for long periods of time without moving at all.

11.2 The 1995 Act gave BW the tools to address this mischief, but instead of using the tools granted by Parliament, BW did nothing to develop an enforcement scheme that was consistent with the powers granted to it in Section 17 (3) (c) (ii). The subsequent unlawful interpretation of ‘using a boat *bona fide* for navigation’ as something more than it was intended to be by Parliament created a problem only in terms of BW’s and CRT’s own perception and definition of the so-called ‘problem’.

## 12 CRT ACTING *ULTRA VIRES*

12.1 It is CRT enforcement itself that has created the alleged problem, with respect to the numbers of unlicensed boats and the numbers of allegedly ‘non-compliant’ boats and/or boaters. In paragraph 2.4 of the Terms of Reference, CRT states: “These trends have resulted in high levels of non-compliance and consequent enforcement action”. This is not true. It is CRT policy that has created high levels of alleged non-compliance and enforcement action. This has been achieved by CRT by deeming as non-compliant large numbers of boats that are complying with what is stated in Section 17 (3) (c) (ii) but are not adhering to CRT’s unlawful, *ultra vires* interpretations of the law, in which it seeks to enforce movement requirements that go beyond what is stated in the 1995 Act.

12.2 CRT has published its own interpretation of Section 17 (3) (c) (ii) as the *Guidance for Boaters Without a Home Mooring* (2011), which it incorporated into the Boat Licence Terms and Conditions, together with other pages of supplementary information on its web site that seek to explain how boaters without a permanent mooring should travel in order to be considered compliant with CRT’s interpretation of the law. Importantly, this law was intentionally written to allow for the many different itinerant boater circumstances and requirements, and deliberately includes flexibility in boat movement without prescribing a fixed range or distance. CRT’s misinterpretation and supplementary information has not been tested in court. There is no case law on this issue from any Court of Record. The interpretation and supplementary information provided by CRT is unlawful.

12.3 In 2015, hundreds of boaters without a home mooring who had had the same travel pattern for many years and whose licences had been renewed without any issue, were suddenly told that their annual travel patterns no longer complied with the law.

12.4 CRT currently considers boaters to be non-compliant with Section 17 (3) (c) (ii) of the British Waterways Act 1995 (see below) unless:

- they have travelled a range of more than 20 miles in their licence period (this range requirement is no longer made public anywhere in CRT’s Terms and Conditions, website or literature);
- they have not overstayed longer than 14 days without justification (CRT decides what is justified);
- they have not stayed within “limited areas” for periods of time CRT decides are too long, even if they have moved every 14 days;

- they have not been sighted frequently in particular places, even if they have moved every 14 days or more often;
- they have not made a single long journey and then stayed in a “limited area”;
- they have not cruised in any other pattern that CRT considers to be non-compliant

12.5 There appears to be no limit to the type of cruising pattern that CRT considers to be non-compliant. From 2022, CRT appears to have been applying an implied progressive tightening of enforcement that appears to return to requiring a “progressive journey around the entire canal system or a significant part of it”, even though this requirement was deleted from the Mooring Guidance for Continuous Cruisers in 2011 following the Judgement in *BW v Davies* and there has been no subsequent case law or persuasive judgement to justify reversing this deletion.

12.6 Failure to comply with CRT’s current enforcement policy and practice, sometimes referred to as ‘rules’ (as distinct from failure to comply with the law), can lead to a boat being seized and removed using CRT’s powers under Section 8(2) of the British Waterways Act 1983, rendering a live aboard boater homeless and depriving them of their main asset.

12.7 CRT restricts the licence renewal of boaters it considers non-compliant to 6 months, stating that the 6-month licence is an opportunity to ‘improve’ their boat movements. If movement in the 6 months is not considered compliant, CRT either restricts the licence renewal to 6 months again, refuses to renew the licence unless the boater takes a home mooring, or refuses to renew the licence at all. Moorings are scarce, largely non-residential and can be unaffordable. Boaters in the enforcement process are prevented from taking a CRT winter mooring. CRT staff routinely tell boaters that there is no appeal against the restriction of a licence renewal to 6 months or refusal to renew without a home mooring.

12.8 On 10th March 2015, CRT published on its web site advice that:

*“Whilst this means that we cannot set a universal minimum distance for compliance, 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.”*

12.9 However, a Mid Point reminder sent on 20th April 2016 to a boater without a home mooring by Aileen O’Connor, National Boating Co-ordinator, stated a distance of 20 miles:

*“To make sure everyone has a fair chance of mooring on our canals and rivers it’s important to respect the movement requirements. This means cruising to a new place at least once a fortnight and being on a genuine journey over the course of the licence period. Boaters often ask us ‘how far is far enough’ and we have advised that it’s very unlikely that someone would be able to satisfy us*

*that they've been genuinely cruising if their range of movement is less than 20 miles. In most cases we would expect it to be greater than this."*

- 12.10 CRT does not and should not have the legal power to supersede legislation and specify a range or distance required for compliance, let alone keep increasing it. The fact that CRT's *Guidance for Boaters Without a Home Mooring* has not been revised to include either of the above references to the range expected by CRT is proof of that.
- 12.11 In 2021 or 2022, CRT removed from its website any references to a range of movement of 20 miles or any other number of miles, following a decision by the Waterways Ombudsman in Case 1202.
- 12.12 Between 2022 and 2025, CRT adopted an implied policy of progressive tightening of enforcement that appears to return to the "progressive journey around the entire canal system or a significant part of it" requirement that was deleted from the Mooring Guidance for Continuous Cruisers in 2011 following the Judgement in *BW v Davies*.
- 12.13 For example, in 2024, in a letter to one boater family with a child at primary school, CRT wrote, "There is no required range, but we have previously advised that if people remain within a small area such as a range of just 20 miles, they will enter our enforcement process. Normally we expect a much greater range, and that people are on a genuine journey progressing around our network. We're looking for boats without a home mooring to use a fair amount of the network available to them".
- 12.14 Between 2022 and 2025, boaters whose annual travel patterns had since 2015 been sufficient to enable renewal of their licence for the full 12 months, were increasingly finding that CRT would not renew their licence without a home mooring for 12 months, but were being forced to accept 6-month licences; some were blocked altogether from renewing their licence without a home mooring, and some were blocked from renewing their licence at all, leading to the receipt of Section 8/13 notices and for those who were unable to find alternative accommodation or move to another navigation authority's waterways, a court case to obtain an order to remove their boat.
- 12.15 Communications between CRT and these boaters has become increasingly bizarre, with CRT staff tying themselves into knots trying, in response to anguished communications from boaters, to explain what exactly the boaters had done wrong in terms of the British Waterways Act 1995, CRT's *Guidance for Boaters Without a Home Mooring*, and supplementary advice / FAQs on the CRT web site. CRT staff were, and are, unable to provide a satisfactory explanation of what the boaters had done "wrong", firstly because the law does not permit CRT to be prescriptive about how far and where boaters licensed under Section 17 (3) (c) (ii) should travel; and secondly, because the law is widely drawn to accommodate a range of different patterns of boat use.
- 12.16 The penalty of licence non-renewal and consequent seizure of the boat is out of all proportion to the alleged breach of the law. Tenants of houses do not get made homeless because they have not cleaned their windows, even though this

is a common term in tenancy agreements. Boat dwellers, on the other hand, are being made homeless for trivial reasons such as visiting the same place too many times; turning round too often; or only travelling a range of 19 miles in their licence year (whilst adhering to the 14-day limit).

- 12.17 CRT's policy of restricting licence renewals to 6 months and refusals to renew licences at all without a home mooring in cases where it deems boaters to be non-compliant, has created a situation in which it is much more difficult for a boater without a home mooring to renew their licence. This contrasts with the intention of Parliament regarding Section 17 (3) (c) (ii), which was that no specific travel pattern requirements were prescribed, and the reasons for stays of longer than 14 days were not restricted, in order to give boaters without a home mooring the maximum opportunity to comply.
- 12.18 The current policy has contributed to an increase in unlicensed boats with the consequent loss of revenue for CRT. Many boaters are desperate to be "allowed" to pay for their next licence and yet their licence fees are being arbitrarily refused by CRT. CRT appears to be operating a deliberate strategy to deem more and more boaters non-compliant in order to remove or reduce the numbers of boats without a home mooring.
- 12.19 This has resulted in more boats being unwillingly unlicensed because the boater cannot find or afford a home mooring, and has nowhere else they can live. The escalating surcharge on the licence fees of boats without a home mooring is counterproductive in that it has also contributed to an increase in unlicensed boats, with more boaters being unable to afford the increased licence fee.

### **13 THIRD LICENCE – ULTRA VIRES AND UNNECESSARY**

- 13.1 The idea of creating a third type of boat licence to cater for boaters who are allegedly not complying with Section 17 (3) (c) (ii) but who do not want, cannot find or cannot afford a mooring has been proposed many times since at least as long ago as 2002. 'District', 'Roving' or 'Community' mooring permits would, it was proposed, cost more than a licence without a home mooring and enable boaters to move every 14 days within a small area. This is unworkable for the following reasons.
- 13.2 Firstly, offering boaters a way out of the enforcement process that means paying a substantial extra fee to do what Section 17 (3) (c) (ii) of the British Waterways Act 1995 already permits them to do is tantamount to demanding money with menaces. Section 17 (3) (c) (ii) as it is written (as opposed to CRT's unlawful interpretation of it) already enables boaters to move every 14 days within a small area because the section does not prescribe any cruising range or distance, or a limit to how many times a boat can return to a place, that is required to comply.
- 13.3 There is nothing in the 1995 Act prohibiting boats licensed under Section 17 (3) (c) (ii) from remaining within a small geographic area that is bigger than one place, provided that they pass the test of not remaining continuously for more than 14 days in any one place. This is underlined by HH Judge Halbert in the

judgement in *CRT v Mayers. Moore v British Waterways* [2013] EWCA Civ 73 establishes that an action is not unlawful just because CRT does not give permission for it. In other words CRT cannot substitute its consent for law.

- 13.4 Secondly, legal advice obtained by CRT in early 2014 raised doubts about the practical implications of implementing the scheme, and CRT decided that roving mooring permits could not be used to deal with “localised issues of mooring congestion on the waterways”. The Advice stated that the restriction of the availability of permits to a particular group, in a specific area, was not legally sound. A CRT press release on 7th March 2014 stated that:

*“a significant risk was identified that we might then be obliged to offer them more widely across the system to all boaters. This was never our intention as we believe that the adoption of such a new national permit scheme is not desirable”.*

- 13.5 Offering a ‘Roving Mooring Permit’ to all boaters would undermine the ability for CRT and marina companies to profit from moorings and for CRT to profit from Network Access Agreements, directly managed moorings and End of Garden/ End of Field mooring fees.

Appendix 11. CRT Press Release, 7th March 2014

## **14. CONCLUSIONS TO LEGISLATIVE STRUCTURE**

- 14.1 There is no need for new legislation; the alleged problem, as defined by CRT, has been created by CRT and can be “solved” by a change in CRT policy.
- 14.2 Given the Advice provided to NBTA (see 4 above), we propose that CRT moves to simply enforcing the prohibition on remaining continuously in any one place for more than 14 days (unless a longer period is reasonable in the circumstances). They may even find that doing so removes their perceived issues.
- 14.3 The NBTA does not disagree with CRT’s definition of “place” in its Guidance for Boaters Without a Home Mooring. We broadly agree that a “place” in the context of Section 17 (3) (c) (ii) is not simply a particular mooring site or position, but rather is a village or hamlet, a suburb or district within a town or city, or an uninhabited area between places. It also should be recognised that “places” on the waterways can be different from places on land. To a boater, “Church lock” and “Town wharf” may be different places, even though they may be within the administrative boundary of the same town or village.
- 14.4 In considering whether navigation is *bona fide*, CRT should move away from using an in-house methodology to determine compliance which boaters then have to challenge, and instead move to a presumption of compliance provided that the 14-day limit has been complied with and any longer stays have been reasonable in the circumstances.

- 14.5 This means that CRT should drop its attempts to modify the wording of Section 17 (3) (c) (ii) by promulgating its interpretation of the Section (its *Guidance for Boaters Without a Home Mooring*); it should drop its use of an internal, minimum range of movement; and it should drop its use of other internal standards regarding the number of times a boat changes direction, returns to the same place, or otherwise does not meet movement standards that are not based in law, and are not communicated to boaters anyway.
- 14.6 If CRT did this, most of the boats that it alleges are not “genuinely navigating throughout their licence period” would instantly become compliant and the costs to CRT of its current enforcement methodology and practice would be significantly reduced, leaving a manageable caseload for CRT staff.

## **15 PROPOSED ORDER UNDER TRANSPORT AND WORKS ACT 1992**

- 15.1 Although the minutes of the CRT Trustees’ meetings are heavily redacted, we know from these minutes between 2022 and 2024 (minutes from 2025 have not been published at the time of writing) that CRT intends to seek a Transport and Works Act order (TWAO). According to the Trustees’ minutes, the proposed powers to be sought via a TWAO include: powers to refuse to renew a boat licence in cases where the boater owes a debt to CRT; powers to refuse to renew a boat licence on the grounds of previous non-compliance; and the modification of Section 17 (3) (c) (ii).
- 15.2 In a situation where non-compliance is defined by CRT, and in which CRT routinely forces boaters into non-compliance by refusing to renew their licences without a home mooring, refusing to renew a boat licence because of previous non-compliance would be arbitrary and unjust.
- 15.3 To refuse to renew a licence because of past debt is a harsh and cruel solution that will only serve to make more boat dwellers homeless and further damage the reputation of CRT. Most cases of licence fee debt arise because of benefit delays or the rejection of the boat licence as housing costs in Universal Credit/ Housing Benefit, or because of unexpected financial hardship such as losing your job or your partner (bereavement or otherwise). A lot of debt is therefore temporary, particularly with benefit claimants who may well be waiting for huge sums of backdated payments due to delays. Refusing to renew a boat licence will not increase the likelihood of recovering the debt.
- 15.4 Under Section 5 (3) of the Transport and Works Act 1992, a TWAO can be used to amend, repeal or revoke “statutory provisions of local application”, such as the British Waterways Act 1995. This means that in addition to adding even more methods of refusing to renew boat licences, CRT could use a TWAO to revoke Section 17 (3) (c) (ii) altogether. To make the occupants of 7,300 boats homeless, that is, 20% of the total number of boats on CRT waterways, would be a draconian solution reminiscent of the worst excesses of totalitarian regimes. The heavy handed and discriminatory nature of these proposed provisions within a TWAO would make the resulting Order highly susceptible to legal challenge.

- 15.5 We recommend instead, legislation that confers rights on boat dwellers to remedy their existing lack of rights.

## 16 DRAFT BILL OF RIGHTS

Appendix 12: Draft Bill on Recognition of Rights of and Protection for Boat Dwellers by Baroness Miller of Chilthorne Domer.

## 17 THE EUROPEAN CONVENTION ON HUMAN RIGHTS, HUMAN RIGHTS ACT, EQUALITY ACT AND TRANSPORT AND WORKS ACT

### *Introductory Comments*

- 17.1 CRT is a hybrid body in that it (a) inherited public functions from BW and (b) it has new responsibilities leading to charitable fundraising. Licensing falls fairly and squarely within the scope of the former and so for the purposes of this paper, CRT is regarded as a public body.
- 17.2 All public bodies are bound by the European Convention on Human Rights (a treaty) (“ECHR”), the Human Rights Act 1998 (“HRA”), the Equality Act 2010 (“EA10”) and the Merchant Shipping Act 1995 (“MSA95”). The purpose of the HRA is to give unambiguous force to the ECHR. Prior to 1998, courts were not naturally in tune with the obligation to uphold the ECHR (being a treaty), and the purpose of the Act was to ensure that it was front and centre of the responsibilities of those engaged in adjudication.
- 17.3 The five elements of the ECHR that are in focus are:
- (a) Art 8: respect for home, including its environs and, for owner-managers, the workplace;
  - (b) Art 6: right to due process (i.e. to be able to have a court hear a dispute and present to it a defence or claim);
  - (c) Art 14: right to treatment that is not discriminatory based upon a range of topics including disability, maternity, race, sex and “other designations”, of which “itinerant boat dweller” is one;
  - (d) Art 3: right to be not subjected to inhuman or degrading treatment; and
  - (e) Art 1 Protocol 1: right to peaceful enjoyment of one’s possessions.
- 17.4 In relation to Art 6, the Minister gave an undertaking to Parliament on behalf of CRT as a condition precedent to the making of the Transfer Order in 2010, that it would never seize a boat subsequent to issuing a Section 8 (of the British Waterways Act 1983) order without first engaging in due process and in particular issuing a claim form.
- 17.5 The key elements of EA10 in focus within the scope of this paper include:
- (a) the concept of “protected characteristic” (as identified in paragraph 17.3(c) above) (Section 4);
  - (b) the prohibition of discriminatory treatment based upon a protected characteristic (Section 13);

- (c) the prohibition of indirect discriminatory treatment of someone who is supporting someone else who bears a protected characteristic (Section 19);
- (d) the concept of “reasonable adjustments” in the provision of any product or service on modified terms so as to remove differential in the way that the person receives or uses the product or service (Section 20); and
- (e) prohibition of harassment of a person exploiting a protected characteristic (Section 26).

17.6 “Reasonable Adjustments” are provisions that are required of the public body in provision and delivery of services so that the person with the protected characteristic can receive and use the products or services offered by the public body on an equal footing to the person without the protected characteristic. This also includes the performance of the individual in regard to rights and obligations to the public body (without effectively changing the law) and the operation of enforcement by the public body against the person with the protected characteristic. Reasonable Adjustments are stipulated by the person and the public body is obligated to provide them on demand unless it can argue why the adjustment should not be made on the terms specified. It is not open to the public body to refuse the adjustment (to do so would be unreasonable). Reasonable Adjustments are not time-limited for some time-related or cost-related reason.

17.7 The key elements of MSA95 in focus within the scope of this paper include:

- (a) that there is no minimum size stipulated in the Act, and therefore “ships” include vessels of all sizes and descriptions and thus boats that are accustomed to navigating water in CRT's jurisdiction;
- (b) that for the purposes of Part IV (Section 85 – Section 108), “British Ship” only has to be owned by a British Citizen: it does not have to be registered on the Ships Register or the Small Ships Register;
- (c) for the purposes of Section 104 “port” includes “appearance of port”; given that the canals were originally intended to carry freight and any town into which a canal was built had a wharf the purpose of which was to load or unload freight, this makes such wharves “ports” and so it must be a general provision that Section 104 is engaged in any town into which a canal runs;
- (d) Sections 104 and 105 encompass the power of the master of a boat to detain someone not following the instructions of the master not following the master’s instructions that are related to safety;
- (e) Section 100 places an obligation on the master of a boat to navigate safely (at his or her sole discretion) including therefore when not to navigate; and
- (f) correspondence received by the NBTA from the Marine and Coastguard Agency confirms that there is no reason in law why MSA95 should not apply on inland waters, and therefore this act does cover inland waters.

### ***CRT and Its Delivery of Compliance with the ECHR***

17.8 In relation to Art 6, the Minister gave an undertaking on behalf of CRT to the NBTA, in Parliament, as a condition precedent to the making of the Transfer Order in 2010, that it would never seize a boat subsequent to issuing a Section

8 order without first engaging in due process and in particular issuing a claim form.

- 17.9 The NBTA has a Casework Team, all trained and now 25-strong, that has over the last 16 years handled well over 1,000 cases, the majority of which have been supporting boaters in enforcement disputes (as defendants) against CRT. The Casework Team notes that it has come to its attention that on each occasion that CRT has served a claim form on an itinerant boat dweller:
- (a) CRT serves the claim form on the boater only a matter of a few days (maximum 1 week) on the boater (to their boat) giving insufficient time for the boater to seek representation and respond to the claim;
  - (b) the combination of (regularly) a lack of understanding of legal process on the part of the itinerant boat dweller, lack of time to digest the claim and the complexity of the subject matter (which is hybrid housing / marine law: a combination usually alien to most “high street” housing lawyers) this compromises the ability of the boater to defend their case;
  - (c) the NBTA Casework Team has encountered a number of cases where the defendant experiences a mental health disability relating to acute anxiety, resulting in the defendant being disengaged from the process giving rise to an Art 6 violation on the part of CRT; in one (current) case an NBTA Caseworker has been obliged to step in as “Litigation Friend”, something that CRT actively resisted and petitioned against;
  - (d) boats seized under Section 8 of the British Waterways Act 1983, subsequent to proceedings where some or all of these items above have been manifest;
  - (e) each of these cases, by their very nature, involve Art 8 (hence the need for CRT to bring proceedings per its undertaking to Parliament as opposed to CRT simply seizing the boat) yet each and every claim form has the box ticked “no issues of Human Rights”;
  - (f) invariably these matters involve detailed evidence; there is always a “back story”; there is always a defence of some type; additionally given that Art 8 is engaged this commands a “full scope proportionality assessment” in accordance with the “Oakes Test” (see R -v- Oakes [1986] 1 SCR 103) and Bank Mellat (see Bank Mellat -v- Her Majesty's Treasury (No. 2) [2013] UKSC 39); to the knowledge of the longest-standing Casework Coordinator and the Legal Officer (one of the founders) of the NBTA, CRT has never conducted a full scope proportionality assessment; the very fact that a full scope proportionality assessment is mandated implies evidence describing the “back story”; CRT invariably brings these cases to court using the Part 8 procedure of the Civil Procedure Rules (“no disputes of fact”); in Part 8 cases the defendant is barred from presenting evidence; only the wisest of litigants in person understand this nuance and it is usually only by way of intervention by members of the NBTA Casework Team that application is made for these matters to be transferred to the Part 7 procedure and adjourned for evidence;
  - (g) at first blush, CRT attempted to discount the engagement of Art 8 at all; it then fought long and hard asserting that even if Art 8 was engaged it was not determinative in the matter because of the effect of Pinnock (see Manchester City Council v Pinnock [2010] UKSC 45) (introductory tenancies) and Powell (see R (ex parte Powell and others) v London Borough of Hounslow and others [2011] UKSC 8) (demoted tenancies); it

took the Court of Appeal to remind CRT that Art 8 was very much engaged and it was not appropriate to summarily dispose of matters because of Pinnock and Powell (see Canal & River Trust -v- Jones [2017] EWCA Civ 135);

- (h) In a subsequent case, CRT made submissions that led to directions that appeared to reverse the effect of Jones (but were later rescinded).

- 17.10 In 2023, in one case the allocated NBTA caseworker was lambasted in court by CRT's retained Counsel Mr Stoner KC, and great effort was expended to seek to have that person deposed from assisting the boater. The Court disagreed and welcomed the caseworker on the grounds that the boater was otherwise unrepresented: the imbalance of arms was palpable (see *Dombo Beheer BV v The Netherlands* [1993] ECHR 49). This has occurred more than once; in fact, when this is taken with other steps taken by CRT to discredit, exclude or ignore submissions by the NBTA Casework Team this leans towards CRT being engaged in "SLAPP" (Strategic Lawsuits Against Public Participation) actions; most of the factors on the contributing criteria list are present. SLAPP was outlawed by the Ministry of Justice in 2023 at the conclusion of a public inquiry by the Lord Chancellor and supporting statements from the Law Society and the Ministry. CRT is reminded that where a court agrees that a matter bought by a claimant amounts to SLAPP the matter is dismissed with a costs order made against the claimant.
- 17.11 CRT routinely claims that it is not a housing authority (which is true) and therefore, has no obligations to provide housing (which is true because CRT is not a housing authority). For an itinerant liveaboard boater, a navigation licence is rent (see *Anthony Beanlands -v- London Borough of Camden (HB)* [2020] UKUT 158 (AAC)). Landlords charge rent. This has bearing on circumstances when a navigation licence is not in issue (whether because it was revoked or the boater has not yet applied for one). CRT routinely demands a fee from the boater (especially in settlement negotiations) equivalent to the pro-rata fee of a navigation licence. CRT calls this a "trespass fee" and trespass occurs when someone ventures onto a landowner's land without consent. It follows that CRT is a *de facto* landlord. Landlords have responsibilities to occupiers of their land whether they occupy by licence, tenancy or as trespassers. This involves due process. This point appears to have evaded CRT's attention.
- 17.12 The thrust of CRT's policymaking in relation to "regulation" and enforcement of licensing under Section 17 (3) (c) (ii) has always been couched in discrimination and bigotry. It is a regular occurrence that policy is promulgated and enforced that drives boaters away from Section 17 (3) (c) (ii) and towards taking a mooring (Section 17 (3) (c) (i)). Amicable settlements proposed by CRT invariably contain this requirement.
- 17.13 CRT introduced the surcharge on the licence fees of boats without a home mooring on 1st April 2024. The NBTA has five individual, independently reached counsels' opinions stating that the surcharge is discriminatory (and thus violates Art 14). Even the CRT Equality Impact Assessment of the surcharge proposals suggests that the surcharge is wilfully discriminatory.

- 17.14 In 2012, during the Olympic Games, CRT closed the navigation on the River Lea in London, leaving boaters stranded above the closure with no potable water as the only working public water point failed and was not repaired. CRT ended up provisioning a water bowser in the face of scrutiny by a BBC television crew.
- 17.15 CRT has since 2024 been “suspending” facilities and closing showers and toilets. In fact, there has been a gradual degradation in facilities provision since CRT took over from BW in 2012. This has become particularly acute since 2023, and what was (in broad terms) a specification of service provision of “within four hours (ie 16 ‘lock-miles’) of the previous services” has changed to “a minimum of 8 hours cruising range and probably more”. This implies a minimum of 32 lock-miles and probably much more than this. If this involves navigating on a river, then the obvious conclusion is that during winter, when the river is in flood, it becomes impossible to empty the toilet. It also forces itinerant boat dwellers to move much further distances, and the 20-mile range criterion becomes dwarfed by the need to fill up the potable water, dispose of the rubbish and empty the toilet. In some cases, this has led to grossly unsanitary conditions. This amounts to degrading treatment and thus a violation of Art 3 ECHR.
- 17.16 If a boat is seized by CRT following enforcement against the boater, regardless of the location of the removal, it is towed, craned out and transported by road to a “secret” yard outside Chester operated by Commercial Boat Services (CBS). There are rows of boats in this yard. CBS openly advertises for sale boats that have been seized. It is open to a boater whose boat has been seized pursuant to Section 8 of the 1983 Act to have the boat returned upon payment of the fees of CRT. A truck from London to Chester will cost in excess of £2,000 (each way). A mobile crane to lift a 20-ton narrowboat usually costs around £2,500. So CRT has synthesised a regime whereby the expense of the contractors means there is no feasible way for the boater to regain their boat. This amounts to a violation of Art 1 Protocol 1 ECHR.
- 17.17 There have been instances where the boat seizure has been demonstrated to be unlawful and so CRT has returned the boat and borne the relevant expense. This is an example of how CRT’s aggressive agenda to define what constitutes an itinerant boater according to its own bias is creating unnecessary cost and distress for an issue that does not exist.

### ***CRT and Its Delivery of Compliance with the Equality Act***

- 17.18 Between 2012 and 2015, CRT appeared to have no regard for its obligations under EA10. For example, in the spring of 2015 the arrival of a new Head of Customer Service was greeted immediately (in the inaugural meeting) with a confrontation by the NBTA relating to one boating family in London. Having just given birth, the mother and father were under enforcement of CRT for “not moving enough”. Their newborn baby was seriously ill in post-natal intensive care in hospital, and the family had been instructed by the consultant to be close at hand at all times. CRT was in absolute denial that any steps had to be

taken in support of the family. The matter was only resolved by the intervention of the new Head.

- 17.19 The Gloucester and Sharpness Canal is approximately 16 miles long. This is less than the “20-mile minimum navigation range requirement”. The northern end opens into Gloucester Docks and thus onto the River Severn. The southern end opens directly onto the Bristol Channel through a sea lock. The Severn and Bristol Channel are extremely dangerous waters to navigate not only because of the wide tidal range but also the bore that moves up and down the channel at speed. This is not a place to take a narrowboat. Many of the boaters on the Gloucester and Sharpness are elderly retirees (i.e. they have a protected characteristic) and are not equipped to navigate on the Severn or Bristol Channel and had not left the Gloucester and Sharpness for years (but had navigated its length). These boaters were subjected to a campaign of harassment by the CRT enforcement officer and threatened with their boats being seized if they didn’t navigate on the Severn. This is another example of how ‘one size doesn’t fit all’ and is exactly why the legislation allows for that flexibility.
- 17.20 One member of the CRT enforcement staff operating in the Nottingham area engaged in a campaign of harassment of one elderly female boater on occasions when her husband was out. The member of staff has now left CRT employment.
- 17.21 One boater, a woman with a mental health disability, was enforced against by CRT. She was not aware of any form of due process, let alone being able to file any form of defence. The seizure process commenced against her boat. Several personnel of the seizure contractor, three police officers and several CRT personnel attended the boat. The seizure commenced, but while the boat was being towed it became apparent that the boater was on board asleep in bed. Eventually, she was persuaded by CRT to get off the boat (but without her possessions), and the seizure was completed. She was later found walking in the local town centre late at night in a confused, absent state, the eviction having triggered an attack of the health condition she suffered from.
- 17.22 Latterly, one elderly boater lived between two boats (i.e. his Art 8 rights covered both boats): (1) his “saloon” and (2) his cabin (for sleeping) and his “shed”. Both boats were licenced, but there was an issue over the mis-posting of fees received by CRT to the correct account and other irregularities, meaning that to CRT it appeared that the boater was non-compliant. Without engaging due process, the boats were summarily seized. The boater did not speak English and held the protected characteristic of race, and he was not familiar with what he had to do in order to complain, nor equipped to make the complaint. He went on hunger strike outside 10 Downing Street with a sign that a friend had written (in English) that stated materially, “Boater: now homeless because home seized by CRT”. Eventually the boats were returned to the boater. No compensation was offered.
- 17.23 These are a few of the early casework cases. CRT appointed a Welfare Officer in 2014, and the Welfare Team is now 4-strong. In recent weeks the NBTA has been informed that CRT has a backlog of approximately 700 requisitions for

Reasonable Adjustments. The NBTA lays out contemporary examples of ongoing abuse by CRT below.

- 17.24 In 2016, the NBTA attended a meeting with CRT to discuss CRT's non-compliance with the Equality Act. The Head of Legal Services entered the meeting and before he sat down, said "I must stress that I am not the Equality Officer". When asked "So who is?" he replied "We don't have one". This situation appears to persist today.
- 17.25 In 2016, one family with children in primary school were subject to enforcement because they were remaining broadly in the area of the school and could not cycle with their child along the towpath more than 1-2 miles each morning and afternoon. The local MP engaged.
- 17.26 The Equality and Human Rights Commission ("EHRC") commenced a prosecution of CRT for gross non-compliance regarding a case involving a pregnant boater without a home mooring. CRT and the EHRC negotiated, CRT gave undertakings and the EHRC relented and withdrew the prosecution. CRT has subsequently reneged on the undertakings.
- 17.27 CRT appointed a Welfare Officer in November 2014 on the strength of a job specification written materially by the NBTA Casework Team. In the summer of 2016, the NBTA started using a form by which a casework client could articulate their requirements for reasonable adjustments to CRT.
- 17.28 CRT responded by the Welfare Officer introducing a form that people with disabilities were instructed to use to "apply" for Reasonable Adjustments. The form was a clone of the 30-page "ESA50" form that people with disabilities had to use to apply to DWP for Employment and Support Allowance ("ESA"). So much so that the metadata of the CRT form still contained the phrase "ESA50". The relevant point is that people applying for ESA are invariably assisted in completing the form. In stark contrast, boaters (regularly unassisted, inherently with disabilities and with marginal communications and printing facilities) were in essence having to fill the form in alone.
- 17.29 Most of all boaters have been instructed by CRT:
- (a) to complete **all** questions;
  - (b) to "apply for" reasonable adjustments; and
  - (c) that if they don't complete the form on this basis their applications will be refused.
- 17.30 In spite of repeated challenges (made essentially to CRT enforcement personnel) and in spite of minor tinkering with what had become known as the "Equality Questionnaire" form, the same policy persisted.
- 17.31 Legal advice received by the NBTA in 2023 includes (in stark contrast):
- (a) a requisition for Reasonable Adjustments is not a request - it is a requisition;
  - (b) the assumption is that unless CRT objects to the requisition, its terms are to be implemented and provided; if CRT has a concern with a specific

element then that element (and only that element) is then up for discussion;

- (c) the discussion is to agree a change to the element that is under review, such that the measure is acceptable to CRT; it is not to reject the provision;
- (d) “acceptable to CRT” must be “reasonable” (hence “reasonable adjustments”) in the Wednesbury sense: it is not open to CRT to object for matters of bald adverse policy; put another way, the presumption is that the requisition will be agreed to unless there are compelling reasons for modification;
- (e) all that is required is for the boater to articulate to CRT, using some mechanism or other, their needs and there is no obligation (and indeed it may be undesirable) for the boater to be channelled into using a specific form / layout / content prompt; and
- (f) in terms of evidence supporting the requisition if this is *prima facie* (e.g. “I have one leg” and it is clear that the applicant has one leg) the need to present lengthy evidence is removed; only if it is advantageous to the process to present evidence would it be appropriate to do this; it should not be determinative of the agreement of CRT.

17.32 CRT refuted each of these points. Leigh Day (acting for two NBTA Casework clients) and CRT battled the points. CRT settled by giving some undertakings as to a revised approach and a change to the documentation. The objections of Leigh Day were not completely addressed. CRT also stated that it flatly refused to engage with the NBTA in the development of the equalities policy.

17.33 The undertakings never made it into the CRT Welfare Team’s operating practice, and the Welfare Team Manager informed the NBTA that he had not been informed by the CRT Legal Team of these exchanges, let alone the undertakings.

17.34 Equality Act abuses have continued since 2023.

17.35 In 2024, the Enforcement Team divided itself into (a) “enforcement” carried out by the established enforcers (who became “roving”, following licensees as they traversed the canal system) for straightforward cases, remaining within the Enforcement Team and (b) the “Welfare Team” for all matters involving benefits or Reasonable Adjustments, headed up by the Welfare Team Manager with a different director report. This rearrangement was completed by September 2024 and slowly came into effect.

17.36 However, the division ended up not being as clear-cut as initially portrayed. Reasonable Adjustments requisitions continued to be addressed by enforcement personnel with the attendant difficulties in legal grounding.

17.37 Further, what appears to be an effort to “resolve” equality matters that could be identified as “straightforward” (and thus transferred from the Welfare Team to the Enforcement Team) as part of this rearrangement led to a flood of enforcement cases in Quarter 1 of 2025. Some have been transferred back to the Welfare Team in the face of threatened judicial review proceedings. This has been arduous for the boaters concerned.

- 17.38 In one recent case, one itinerant live aboard boater had his boat seized without due process. CRT agreed to return the contents of the boat including the tools of the boater's trade. It became apparent that the contractor to CRT had disposed of the contents contrary to the obligations of Section 8 of the 1983 Act and Art 1 Protocol 1 of the ECHR.
- 17.39 This considerable catalogue of violations of the provisions of the ECHR and EA10 and the underlying evidence base from which these examples are drawn makes it clear that CRT is recklessly ignoring its statutory obligations.
- 17.40 The NBTA is reminded that the starting point for the Commission was the "Red Tape Challenge", the role of which was to achieve cost saving by apparently seeking to rescind CRT's undertakings to Parliament about due process; curtail Art 8 rights; curtail Art 6 rights; curtail Art 1 Protocol 1 rights; ride roughshod over Art 3 rights; make rights under EA10 unworkable and generally seek to drive itinerant boat dwellers from the water (see the CRT Trustees' minutes of November 2022).
- 17.41 The Red Tape Challenge led in turn to the covert development of a TWAO, the specifics of which have never been revealed.
- 17.42 The Terms of Reference of the Commission make it clear that the objective is to curtail or terminate rights under the ECHR, EA10 and Section 17 (3) (c) (ii)
- 17.43 The NBTA reminds the Commission that due process in the Court and the purpose of the rights granted to itinerant boat dwellers under the ECHR, EA10 and Section 17 (3) (c) (ii) is specifically to protect us from the policies, actions abuses and procedures of a wayward public body such as CRT. The very last thing that CRT should be granted is the power to curtail these rights materially or absolutely.

## **18. OBLIGATION FOR EQUALITY IMPACT ASSESSMENT AND HUMAN RIGHTS IMPACT ASSESSMENT**

- 18.1 All proposals for new legislation, policy or practice made by the Commission should be subject to an Equality Impact Assessment and a Human Rights Impact Assessment, with special focus on Articles 6, 8, 14 and Art 1 Protocol 1 ECHR.

## **19. RECOMMENDED QUESTIONS FOR CRT AND DOCUMENTS TO REQUISITION**

- 19.1 The NBTA recommends that the Commission should put the following questions to CRT and should requisition the documents listed below.

**Questions:**

1. How were boat sightings done or not done immediately after the 1995 Act became law?
2. We recommend that the Commission seeks evidence from Hertfordshire Council regarding its dealings with CRT over the school attendance of the children of boaters without a home mooring.

**Documents to requisition:**

1. Current internal guidance to staff or practice notes on “continuous cruiser” enforcement and licence renewal decisions regarding the criteria:
  - whether to restrict a licence renewal to 6 months;
  - whether to impose a second 6-month licence renewal restriction
  - whether to refuse to renew a licence without a home mooring
  - whether to refuse to renew a licence at all
  - the number of overstays that is deemed to be compliant
  - the reasons that overstays are deemed to be compliant or non-compliant
  - the range of movement that is deemed to be compliant or non-compliant
  - the number of turns that is deemed to be compliant or non-compliant
  - the number of times a boat returns to the same place that is deemed to be compliant or non-compliant
  - the types of cruising pattern that are deemed to be compliant or non-compliant
  - the reasons why a specific part of a boat’s movement is discounted as not being a “genuine cruise”
2. Unredacted copies of:
  - 2.1 The proposals CRT put to DEFRA for a Transport and Works Act Order (TWAO);
  - 2.2 The minutes of meetings with DEFRA to discuss a potential TWAO or legislative reform, especially after November 2023;
  - 2.3 Trust Board Meeting 24th November 2022 Information & Decision Report Trust 653 GOVERNANCE REPORT;
  - 2.4 Trust Board Meeting 24th January 2023: Information & Decision Report Trust 663 (see section 4, UPDATE ON LEGISLATIVE REFORM REVIEW);
  - 2.5 Trust Board Meeting 25th May 2023: 23/029 Transport & Works Act Order proposal;
  - 2.6 Trust Board Meeting 23rd November 2023: 23/069 LEGISLATIVE REFORM UPDATE;
3. Unredacted minutes of CRT Trustees’ meetings from November 2022 to March 2025, and subsequent/ future minutes up to the end of September 2025;
4. Legal advice provided to CRT regarding what can or cannot be achieved using a TWAO;

5. Legal advice provided to CRT in late 2013 or January to March 2014 regarding Roving Mooring Permits;
6. Unredacted copies of minutes and correspondence between CRT and Hertfordshire Council regarding the school attendance of the children of boat dwellers without a home mooring;
7. The Minutes of Evidence of the House of Lords (11 volumes) and House of Commons (16 volumes) Select Committees on the British Waterways Bill, 1990 to 1994. A copy is in CRT's possession. The originals are in the Parliamentary Archives, but the Archives are closed because they are being moved from the House of Lords to the Public Record Office at Kew;
8. We recommend that the Commissioners carry out site visits to speak to boat dwellers without a home mooring who are either vulnerable or under enforcement.

## **20 NO CONFIDENCE IN CRT**

- 20.1 One particular member of the NBTA who stands out as being of importance to this process is Simon Greer. This is because he gave evidence to the House of Commons Select Committee that scrutinised the British Waterways Bill in 1993-1994, that latterly became the British Waterways Act 1995. It is Section 17 (3) (c) (ii) of the 1995 Act that is the focus of most of the friction and dispute between the itinerant boat dwelling community and CRT. It follows that Mr Greer's comments are pertinent to this process. These are reproduced below in summary form.
- 20.2 Mr Greer has been a paying boater for over 43 years. He has travelled most of the canal system. He has been a volunteer restorer. He is a boater with a mooring and has also been a continuous cruiser.
- 20.3 Mr Greer has served on the Committees of RBOA, NABO and (to a lesser extent) the NBTA. He has credentials that demand the respect of CRT.
- 20.4 Mr Greer states:
- (i) "I had hoped I could genuinely write to CRT with wholehearted encouragement to continue your good work, but I do not feel this."
  - (ii) "Quite the opposite, the handling of many issues including Continuous Cruising since the passing of the 1995 BW Act has been lamentable, [amounting to] a complete dog's dinner of ad hoc measures which generally have not been helpful. "
  - (iii) "The fundamental 1995 laws are basically sound, but the subsequent additions have been ad hoc and inconsistent."
  - (iv) "Back in 1995 CRT when BW vacated Parliament without the law it wanted, it declared it would need to revisit the legislation when the time

was right... whatever that might mean. The preamble to CRT's Review indicates that CRT thinks now is that time."

- (v) "I make the assumption that the forensic examination, by the Commission, of cruising and cruising styles examined for and by the 1995 Act is now regarded as inadequate, even inappropriate. I simply disagree."
- (vi) "I remember proposals from BW being exhaustively and forensically scrutinised by two Select Committees, which entirely rationalises the creation of today's law as we know it."
- (vii) Somewhat disappointed, BW's response was to launch "Guidance to Boaters", which it has attempted to substitute for the law it was not able to secure."
- (viii) "Along with others, I have always emphasised the difference between 'guidance and law' and found it difficult to respond to a CRT that operated as if they were the same."
- (ix) "CRT has not found it easy to either acknowledge or act upon such distinction. Consequently, rules have been introduced and enforced which have little or no legal standing but which are treated as sacrosanct."
- (x) This applies, for example, to the "14-day rule" (Section 17 (3) (c) (ii)). The law offers significant flexibility in extending stays of more than 14 days, conditional upon there being a reasonable reason for so doing. CRT consistently ignores this but instead treats the law as strict, threatening boaters with licence reductions to 6 months almost automatically and without investigation... Boaters have no system of appeal."

(editorial note: Mr Greer is apparently not aware of the principle of the right of review of any public body decision; CRT claims there is no appeal to the decision to issue a 6 month licence: this is untrue).

"Proximity to work or schooling is not accepted as a reasonable reason for extended stays. For most folk, they are perfectly reasonable reasons for a local cruising pattern. I recall "Boater's Guidance" required "an onward and progressive journey around the system". [This was determined later to be unlawful and removed]

20.5 Mr Greer refers to two judgments, the matters in which he has expressed an interest, as follows:

**20.6 *Canal & River Trust -v- Geoffrey Douglas Mayers [2013] UKCC O NH 00407 (unreported)***

Judge Halbert's adjudication ... stated at [7.20.3]:

*"the requirement is temporal not geographical. In my view it does NOT follow from*

*"such journey or cruise must take place "throughout the period of the licence" "that it*

*“therefore requires progression round the network or at least a significant part of it”.*

- 20.7 Judge Halbert confirmed inter alia at [7.20.5] that continuous short journeys across a small distance are sufficient to meet the law.
- 20.8 Similarly, the distance needed to be travelled between stays is fabricated by CRT. The distance was deliberately left non-specific by Parliament to assist boaters stay on the right side of the law.
- 20.9 The CRT "guidance" also stated that 30 miles had to be covered in the period of a licence. That could be in 12 months or 6 months (mathematically doubling the distance when in law no specific distance exists).
- 20.10 CRT subsequently dropped the requirement, having unnecessarily caused a great deal of grievance and argument amongst all parties.
- 20.11 [Editorial note:] The “Guidance” has not, since 2015, stipulated a specific distance. On 12th December 2016 one of the enforcement staff of CRT issued to a family with children in a local school an “illustrative cruising pattern” that:  
(a) provided for a restricted range of navigation during term-time;  
(b) required an extended cruising during the school holidays; and  
(c) stipulated a total annual range of 32 km or 20 miles.  
This was almost immediately withdrawn again. The plethora of casework undertaken by the NBTA since that time, many cases of which have involved dealing with “restricted licences” for ostensibly not navigating “far enough”, have made it clear that 19.9 miles is “not enough” and 20.1 miles is good enough”.
- 20.12 *Swan Hill Developments & ORS v British Waterways Board [1997] EWCA Civ 1089***
- 20.13 As each canal was built in the late 18<sup>th</sup> and early 19<sup>th</sup> centuries the constructors of the canals (the “Adventurers”) sought acts of Parliament to authorise the construction. Each Act (the “Enabling Act”) contained a clause that materially gave rights to the landowners, over whose land the canal was constructed (and thus they were dispossessed of their land), the right to free use of the canal including to navigate and to moor. This was the quid pro quo.
- 20.14 In the 1990 Bill BW sought to extinguish the Enabling Act rights but Parliament refused to accede to this request.
- 20.14 Swan Hill Developments, as landowner, was denied by BW its right under the enabling Act. Swan Hill Developments won its adoption of historical entitlement. This was only two years after Parliament refused to extinguish such historical canal rights.
- 20.15 In Mr Greer’s case he has a mooring on the Macclesfield Canal. The Macclesfield Canal Enabling Act 1826 grants to him the right to use a mooring alongside his own land, free of charge. He has been using his land on this basis for 20 years. CRT denies Mr Greer’s right and CRT and Mr Greer have been locked in a bitter dispute for some time.

20.16 Mr Greer refers to a range of issues that have led to chronic dispute between CRT and the itinerant boat dwelling community:

- (a) The Ombudsman should be independent. Presently, the Ombudsman is financed by CRT. To the average boater this does not say 'independent'.
- (b) CRT acts as a business with a veneer of charity. It would be better the other way round.
- (c) There is little or no policy accountability. I ask "To whom do we complain about CRT shortcomings?"
- (d) Facilities - Showers, toilet blocks, rubbish collection, water points are being closed down. This needs to stop.
- (e) Staff generally have little knowledge about boating. It might be a good idea if they did as a condition of employment.
- (f) There is much emphasis on PR, not enough on truthfulness. Example: The endless trail of messages telling us how wonderful CRT is. We don't appreciate them when we understand them to be untrue.
- (g) Prices are too high. Particularly moorings and licences, as well as senior management salaries. The surcharge on Section 17 (3) (c) (ii) licences is discriminatory. CRT continues to milk its monopoly position.
- (h) Is it not a good quid quo pro / contribution to the nation's housing shortage, given that CRT is so heavily subsidised by the taxpayer as well as by its paying customers, that the canal system should contribute equitably to housing by way of itinerant boat dwellers as well as recreational users ?
- (i) More income could be raised by attracting more customers for a less expensive alternative to conventional housing.
- (j) Cumulative exhaust emissions from unnecessarily enforced boat movement hardly sits comfortably with Government obligation and policy within the subject of Climate Change.
- (k) Holland and France handle their liveaboard community with less acrimony. Why cannot CRT? For whom is CRT managing the canals? For CRT's benefit or for its clients? The canal network is not CRT's private fiefdom, its a public asset. CRT is simply the custodian acting on the public's behalf.

20.17 The NBTA makes the following comments:

20.18 Following the promulgation of new Boat Licence Terms and Conditions in 2015, in the CRT Annual Public Meeting in 2016 one of the executive of CRT

announced that “64% of the itinerant boating community was under enforcement”.

20.19 Over the winter of 2024 to 2025 the NBTA Casework Team observed (by way of trends developing in incoming casework workload) a marked increase in the imposition of licence renewal restrictions on boaters. In spring 2024 a rearrangement of the Enforcement Team and the Welfare Team was announced, to come into effect in autumn 2024. This rearrangement appears to have led to the marked increase in restricted licences.

20.20 In autumn 2024 one of the CRT Council members discovered that 29% of Section 17 (3) (c) (ii) licences were at that time under enforcement. The Council member then attempted to communicate this to the Board of Trustees which proved to be most difficult since communication to the Trustees is very tightly controlled and blocked to all but CRT staff. Nonetheless this was achieved. The NBTA has been informed that this evidence led directly to the establishment of the Commission and, it is understood, the suspension of the development of the TWAO.

20.21 It follows that, by inference:

- (a) CRT has imposed draconian and (the NBTA submits) unlawful terms and conditions to licensing;
- (b) these terms and conditions have led to an enforcement policy that is overzealous and draconian and most of all disproportionate;
- (c) in the context of Art 8 ECHR this leads to a context where no full scope proportionality assessment has been completed to justify the overzealous application of the policy;
- (d) these factors appear to stem from guidance from the CRT Legal Team;
- (e) this combination has led to a significant increase in enforcement with the implied consequence of:
  - (i) unnecessarily increased enforcement cost;
  - (ii) decline in revenues from boat licenses;
  - (iii) this will lead to increased likelihood of expensive litigation with defendants who are predominately legally aidable leading to minimal prospects of CRT recovering costs from the Legal Aid Agency;
  - (iv) which in turn will lead to an escalating legal bill, waste of court time and adverse effects on the mental health and general well-being of those affected; and
  - (v) this has already led to a collapse in good will from the CRT customer base;

all on the watch of Richard Parry, Chief Executive (now resigned), Tom Deards, Legal and Governance Director and Matthew Symonds, Head of Boating and Customer Service.

The NBTA notes that in relation to Item (v) the Customer Satisfaction Rating fell by, CRT claims, 10% since 2023 to 46% but has subsequently risen to 56%. This is addressed below.

20.22 In marketing there is an empirical rule known as the “one in twenty” rule. In simple terms this refers to the ratio of complaints about a service to the satisfaction of the broader customer base. The presumption is that for every articulated and written complaint there are twenty further complaints where the

complainants cannot be bothered to articulate the complaint but are still dissatisfied with the nature of the product or service. Put another way, where an organisation sees an increase in articulated complaints there is a much greater undercurrent of dissatisfaction from the customer base and the organisation should take steps to measure and then address its shortcomings. In the case of CRT a 10% fall in its Customer Satisfaction Rating implies a much greater discontent from the customer base and the wider public in general.

20.23 The NBTA obtained five opinions on the legality of the Licence Surcharge imposed on itinerant boat dwellers commencing on 1st April 2024. All five opinions confirm that the Surcharge is discriminatory. The NBTA has therefore been lobbying the boating community and the wider public against the Surcharge. Public support for the campaign (in opposition to the Surcharge) is strong with extremely low levels of articulated support for the Surcharge. The Surcharge is manifestly unfair. CRT has responded by doggedly and obstinately sticking to its policy, markedly ramping up its fundraising activities and claiming a 10% increase in its Customer Satisfaction Rating. There is no independent evidence to affirm that CRT is improving its reputation or improving its processes. CRT appears to be in denial of its gross unpopularity.

20.24 Although CRT is a charity and thus obligated to break even, its accounts have shown a loss of several million pounds since 2019. CRT appears to be burning its asset base (from the substantial endowment given to it in the Transfer of 2012) to balance the books to stay afloat. In the accounts:

- (a) since 2016 there has been no breakdown of “maintenance” (83% of overheads);
- (b) there is no clarity surrounding “third party funded projects” and when served an FOI requisition of the details of this (both revenue and overheads) this has been blocked;
- (c) the NBTA has identified certain accounting irregularities that have been referred to relevant authorities;
- (d) the operation of Direct Debits by CRT has been found to be grossly lacking (a catalogue of mis-postings) and this has been raised with the bankers to CRT;
- (e) it is self-evident that after thirteen years the “charitable giving” element of CRT's revenue stream has been an unmitigated disaster and thus the base premise for BW being transferred to CRT has been demonstrated to be fundamentally flawed;
- (f) given Item (e) it follows that the grant extension given to CRT by the Minister amounts to a “bailout” but the root cause of the failure of the project was based on the false premise that BW could be successfully privatised. The NBTA warned the Minister of this in 2012 but no heed was taken. It appears that it is now the itinerant boat dwelling community that is on the receiving end of this failure and has been expected to carry the burden of this failure.

20.25 In 2022 the NBTA (among other representative groups) was approached by CRT to provide an opinion on a metric for the specification on the regularity (in terms of cruising hours and range) of provision of services (potable water, Elsan disposal, black water pump-out, rubbish disposal, showers, toilets) on the system. The NBTA responded with a proposed specification of nominally two

hours or eight “lock-miles”. In 2024 CRT announced that services would be provided no less than eight hours cruising range from each other and usually much more than this. This has a direct impact on itinerant boat dwellers in a way that it does not on mooring users as follows:

- (a) mooring users in marinas usually have services in the marina; this therefore only affects them when they leave the marina; as most marina berth holders are recreational this implies that they are only confronted with this limitation when they leave the marina and usually this implies a recreational trip in which navigation is far more intense than the cruising pattern of an itinerant boat dweller, frequently “all day” navigation: the constraint has no relevance;
- (b) mooring users with in-line moorings regularly have no services but the use of the mooring is non-residential (indeed CRT mooring contracts stipulate “no residential use”); users of such moorings are likely to embark on recreational trips as Item (a) above;
- (c) conversely itinerant boat dwellers usually move each 14 days as their rights stipulate; however most boat dwellers only have 1 Elsan cassette; this can be expected to fill in 1 week or less; this implies navigating at least 32 lock-miles to the environs of the next services; this amounts to reintroduction of the “lock-miles rule” (that was demonstrated to be unlawful) by the back door.

20.26 Over the past 2 years there has been a growing incidence of maintenance failures and a growing catalogue of equipment and services being taken out of service for “maintenance” and not being repaired and brought back into service after repair (ever). When taken with the comments made in paragraph 20.25 above this amounts to deliberately targeting itinerant liveaboard boaters by stealth and subverting their Section 17 (3) (c) (ii) rights.

20.27 DEFRA and CRT hold four-monthly grant review meetings in which the Director General (DG) of DEFRA asks CRT questions about the operation of the part of CRT's business that is funded by the grant. The minutes of one recent meeting indicate that the DG of DEFRA asked the representatives of CRT what the level of support was for the Surcharge. CRT's response was “a small amount of opposition but largely broad support”. The NBTA has handed out over 10,000 leaflets in opposition to the Surcharge and the vast majority of these have been warmly received. This suggests that CRT is misrepresenting itself to DEFRA.

20.28 All of these points lead to the conclusion that the policymakers, budget managers and legal teams and thus the executive of CRT have failed in their essential objectives as custodians of the canal network. It is apparent that there is now a manifest failure of confidence in CRT and justifiably so. It follows that CRT and its administration should be restructured to ensure true public accountability, with a genuinely independent Ombudsman and government operational oversight of CRT.

## 21 INVALIDITY OF SURVEY

- 21.1 Canal & River Trust has assembled a small team to examine the context of licensing on CRT's waters and conduct a review of licencing specifically in the context of licencing of itinerant boats essentially under Section 17 (3) (c) (ii) of the British Waterways Act 1995 (the "Commission"). The Commission has embarked on a consultation of the demographic who are the target of the work product of the Commission (the "Consultation").
- 21.2 What stands out is that 89% of boaters licensed under Section 17 (3) (c) (ii) also live aboard. Given the effect of Section 8 of the British Waterways Act 1983 and the enforcement policies of CRT against this demographic as discussed elsewhere in this paper, this means that the Commission is tasked to specifically review enforcement practices by CRT against the homes of itinerant boat dwellers.
- 21.3 Given that one of the fundamental properties of itinerant boat dwellers is that their existence is "off-grid", with all that this means by way of communication, the construction of the Consultation is pivotal in the effectiveness and compliance of the consultation. Given the difficulties (and fundamental flaws) with previous consultations carried out by CRT in this manner the Commission itself has been tasked to consult and has chosen to use Campbell Tickell to act as the expert in the design of the Consultation questionnaire and the processing of the responses.
- 21.4 The NBTA notes that consultation is not a matter of "simple majority voting" with the demographic demonstrating a greater preference winning the day. In particular the Consultation is not statistically valid in itself because the sample is not representative of an even distribution of the overall CRT boat licence holder population.
- 21.5 Submissions made by representative organisations including the NBTA are by their very nature encapsulating the views of a much larger demographic than a single respondent.
- 21.6 It is also highly likely that responses by representative organisations are couched in terms that reflect the policies of those organisations (which one hopes also reflect the wishes of their members, thus implying a segmenting of the demographic)
- 21.7 It is also highly likely that submissions made by representative bodies such as the NBTA are likely to be far more competent than any one individual respondent's submission given the expertise within the representative organisation. Further, in the specific case of the NBTA (and only the NBTA), the Commission must have regard to the NBTA Casework Team.
- 21.8 The Casework Team now has 25 trained caseworkers, has operated for over sixteen years, has involved many cases (estimated to be in excess of 1,000, most of which have been boaters subject to enforcement by CRT), and contains lay representatives supported by a cluster of highly experienced solicitors and counsel.

- 21.9 This means that the NBTA Casework Team enjoys the unique nature of not only being highly skilled to provide competent and extensive primary evidence to the Commission but also holds an extremely large body of statistically valid historical evidence to call upon in so doing.
- 21.10 Further it is noted that CRT has made it its business down the years to seek to discredit and exclude the NBTA from consultation including in court. This has led to the NBTA engaging in several legal challenges of CRT's consultation conduct.
- 21.11 The Commission is no different and the NBTA has already taken the Commission to task within the context of R -v- Brent London Borough Council Ex p Gunning [1985] 84 LGR 168 (giving rise to the “Sedley Criteria” et seq) as laid out to the Commission in the NBTA paper entitled *National Bargee Travellers Association - Response to CRT's 'Future of Boat Licensing Review – Terms of Reference'* (NBTA, Reading, 13<sup>th</sup> January 2025).
- 21.12 In addition the NBTA notes the history behind an attempt by CRT to seek ministerial sign-off of what is apparently a draft but abortive Order under the Transport and Works Act 1992. The preparation of the TWAO appears to have commenced further to the “Red Tape Challenge” proposed in a CRT Trustees’ meeting in 2022. CRT sought to develop the draft TWAO in secret with extensive efforts made to conceal this activity and its content. It is a statutory obligation on the drafter of a TWAO that it shall consult the Minister and seek directions from the Minister of the development process including consultation. The antithesis of such an approach is to conduct development in secret. The NBTA notes that the Terms of Reference that define the locus of the Commission refer specifically to consideration of an appropriate legislative vehicle for reform.
- 21.13 The NBTA also notes that when the Environment Agency sought a TWAO in 2010 each and every objection raised by anyone with a *bona fide* interest and legally valid objection had to be addressed by the drafters (including in undertakings) before the Minister would make the statutory instrument. The NBTA notes that given the above it is uniquely placed to raise legally valid objections (and already has done so and does so in this paper). CRT is then obligated to heed and resolve these objections either by way of negotiation or simply removing the objectionable clauses from the draft TWAO. If CRT does not do this it immediately becomes vulnerable to judicial review. For the Commission to be conducting its work competently it must have regard to this principle and this implies what must be included, in its work product, on a mandatory basis.
- 21.14 “Simple Majority Voting” in the Consultation simply will not do. Itinerant boat dwellers licensed under Section 17 (3) (c) (ii) are a minority of 20% and to adopt a proposal simply because it has majority support would be highly discriminatory and vulnerable to legal challenge.
- 21.15 The NBTA informally consulted an academic (“Dr A”) on the form and fit of the Consultation. This was by way of giving to Dr A a copy of the Consultation

questionnaire. Dr A lectures at one of the Russell Group Universities in research methodology. Dr A was particularly scathing of the construction of the Consultation questionnaire to such an extent that the NBTA submits that the Consultation itself is flawed leading to the undermining of the work product of the Commission should the Commission rely on the Consultation responses. Dr A's comments are listed below. The NBTA also conducted another academic who is engaged in research at another Russell Group University ("Dr B"). Dr B independently raised concerns about the *bona fides* of the Terms of Reference (in particular whether they have been interfered with) already brought to the attention of the Commission.

- 21.16 The make-up of the Commission (the individuals' identities, their credentials and any connection to CRT) is not stated in the questionnaire. There is therefore an inability to assure the respondents that there is no conflict of interest.
- 21.17 In response to the statement in the Consultation questionnaire of "... the issues that [the respondents] are experiencing and any changes people would like to see to [CRT's] approach to boat licensing.." Dr A responds:
- How were these "topics" identified by CRT ?
  - Was the identification of the topics as stated [*inter alia* at Q7 et seq and Q30 (assuming the respondent listed 5 issues for response at Q3)] CRT-led or user-led?
  - in what fora was the information gathered?
- On the basis that the list of topics has been CRT-led this pre-guides the respondent skewing the results. The Consultation is biased from the start.
- 21.18 Dr A goes on to say (paraphrased) "There is / has been a longstanding effort by actors to reverse or 'flip' the research model used in user-targeted data gathering from 'top-led' to 'user-led'. The Consultation guidance does not acknowledge this 'flip' in its design."
- 21.19 Dr A goes on to say "The Consultation is inclined towards Action Based Research, but again that presupposes a 'flipped' model where the participants devise the questions and direct the questions towards policy change, and I do not see that the Consultation was the result of Action Based Research. It should be, that should be clear and it should be made clear."
- 21.20 The NBTA observes that Action Based Research is engaging, collaborative, iterative, cyclic, and reflective. The advantage of Action Based Research is that it empowers individuals and communities by giving them a voice in addressing their own problems. The past 12 years of experience of CRT is that the very last thing CRT seeks is the empowerment of the itinerant boat dwelling community. It appears that CRT has an ingrained prejudice against this demographic and has set about to eradicate it. The Commission has been tasked to "dress up" the Consultation in a manner that (CRT hopes) will endorse its own policy aspirations.
- 21.21 The Commission's Terms of Reference and the minutes of meetings have been obfuscated by CRT. The Terms of Reference were not only prepared by CRT in isolation (devoid of any sense of collaboration with the NBTA) but reflect previous work conducted by CRT that was done in secret. The Commission is a

“one hit wonder” with no sense of cyclic or iterative context. Finally it is clear from the construction of the Terms of Reference and the influence that CRT has sought to exert on the Commission (including initially seeking to monopolise the evidence base) is devoid of thoughtfulness and reflection. The Consultation does not therefore reflect Action Based Research and the entire process is undermined. The Commission should heed this stark warning as it prepares its work product.

- 21.22 Dr A makes no criticism of the *bona fides* of Campbell Tickell in itself. Dr A makes comments as to the identity of the directors and any connection with members of the Commission but recognises that Campbell Tickell is a professional arm's-length market research house.
- 21.23 However Dr A also reports: *“My biggest issue is that [Campbell Tickell] is a Management consultancy; they don't appear to have public engagement - community engagement - on the agenda. This is a Plc that consults on profit maximisation and streamlining for business interests. [Campbell Tickell is] not a consultancy that deals with public engagement and community led initiatives. .. the 'sectors' they service ... [include] government, housing, [London Borough Councils] and private charities, ... nothing to do with [minority demographic public] engagement in any meaningful way. Their recent case studies are mainly to do with housing.”*
- 21.24 It follows that Campbell Tickell was not a good choice for the construction, operation and data processing of the Consultation to such an extent as to invalidate the veracity of the Consultation itself.
- 21.25 The NBTA notes that the Consultation Principles 2018, UK Government Cabinet Office, 9th March 2018 stipulate at [E] that:  
*“Consultations should last for a proportionate amount of time. Judge the length of the consultation on the basis of legal advice and taking into account the nature and impact of the proposal. ... Consulting too quickly will not give enough time for consideration and will reduce the quality of responses.”*
- 21.26 The NBTA notes that although the Commission is scheduled to deliver its work product in September 2025 (after nine months) the Consultation is scheduled to run for seven weeks including two public holidays and the Easter holiday season. Normally a consultation of this broad-reaching but absolutely pivotal nature [to the minority demographic it is specifically targeting] especially considering paragraph 21.27 below would run for twelve weeks. CRT is renowned (and has been taken to task) for repeatedly flouting this principle to further its own interests.
- 21.27 In addition the Consultation Principles (supra) also state at [F]:  
*“Consultations should be targeted. Consider the full range of people... affected by the policy ... Ensure they are aware of the consultation and can access it. Consider how to tailor consultation to the needs and preferences of [the itinerant boat dwelling demographic] ... that may not respond to traditional consultation methods.”*

- 21.28 It is vital for the Commission to heed the fact that the targeted demographic is by its very nature less reliably “connected” and an online-only Consultation will also not do. It is relevant to note that one of the officers of the NBTA has also been retained by another university as a telecommunications market expert and professional in a research project entitled “Digital Exclusion”. That study is essentially examining the way that itinerant communities are excluded from communicating within society electronically in the 21<sup>st</sup> century. For the Consultation to be “online only” and to have been communicated by way of electronic communication only to a community in which there is (from the casework evidence base) a substantial presence of *inter alia* dyslexia is not good enough.
- 21.29 Dr A amplifies this view in the context of the statement in the preamble of *“Depending on how many issues you would like to identify, this survey will take between 20 and 40 minutes to complete.”*  
 Dr A comments *“No one is going to stick with it that long and [the Commission and Campbell Tickell] know it. ... while these issues are vitally important to itinerant liveboard boaters so are other more mundane matters such as lighting the fire to keep warm, feeding the children, getting to work, getting the potable water in, emptying the toilet (in the scarce Elsan disposal sluices) and getting enough sleep to do all of the above. It’s too long. [The Commission] should have held group meetings where this data could have been gathered more easily.”*  
 The NBTA notes that the Commission has referred to holding “engagement sessions”. However, these have not been clarified by way of location, timing, duration, publicity of the meetings, whether CRT will be present (and thus influencing the conduct of the meetings), how the meetings will be conducted (ie implying the nature of the engagement) and so on.
- 21.30 In the preamble to the Consultation the Commission states: “The survey comprises the following sections:”...
- 21.31 *4. Measuring success*  
 Dr A comments that this is a vague statement without specific scope and “... usually means ‘what do we need to look out for, from you who will object’”. Put another way the Consultation is lacking *bona fides* as a vehicle for genuine engagement and collaboration.
- 21.32 *6. Next steps*  
 Dr A comments that this is too presumptive. Dr A’s view is that users should guide the next steps, not be told them.
- 21.33 The preamble to the survey states *“The survey can be completed anonymously. Details on how personal data will be processed as part of the survey can be found here [link].”*  
 Dr A reports: *“[Not acceptable] No ethics forms and gatekeeping has been undertaken here - this is a policy initiative and change management disguised as research. If this were research - real research - anonymity and protection of data would be much clearer and ethics forms would have been completed to assure that.”*

- 21.34 The NBTA notes that (a) the preamble on the first page of the Consultation is all about licencing and (b) set in that context, Q1 asks for a declaration of the relationship between the respondent and CRT (this question in itself leading to ambiguity: it does not ask “are you a boater?” it materially asks “What is your connection to a CRT licence?”). If, **and only if**, the respondent answered “boater” at Q1 an additional page of questions is presented asking about *inter alia* whether they live on their boat. This question therefore engages Art 8 of the European Convention on Human Rights and is thus the most important question of the entire Consultation and in fact this entire process. Yet the question is not reached by someone who *inter alia*
- (a) is a prospective boater and therefore does not yet have a licence; or
  - (b) is under enforcement so their licence has been revoked; or
  - (c) is a boater on a different jurisdiction and therefore does not hold a CRT licence; or
  - (d) is the cohabitee of a licensee so does not hold a licence; or
  - (e) is on non-CRT water so cannot have a licence but still has a fundamental interest in the consultation; or
  - (f) is a member of the public who has a *bona fide* interest in the consultation, is a boater, but is not interested in being a CRT licensee.
- 21.35 The NBTA notes that this defect in the construction of the Consultation amounts to gross negligence and also invalidates the usefulness of the Consultation and its work product. The NBTA also submits that the objective of the Commission is to address new policies that target specifically itinerant boat dwellers. The Consultation is however open to a much greater majority who, unless they are itinerant, will not see these questions. This calls in to doubt the statistical validity of the question-base.
- 21.36 There is a statement in the preamble relating to the question that follows immediately after the “issues” section. The Consultation states: *“If you have more than five issues to raise, there will be an opportunity to share additional comments at the end of this section.”*  
 The Consultation also states *“Please be assured that all feedback will be carefully considered.”*  
 The NBTA seeks assurances from the Commission that the responses to Q33 (assuming that a boater (Q1)) selects 5 issues to respond to at Q7) have been genuinely and conscientiously taken into account by the Commission (with evidence).
- 21.37 The preamble to the “issues” section of the Consultation states:  
*To keep responses concise and easy to review, there is a word limit of 100 per issue.*  
 Dr A responds: *“Most people who are in precarious positions - who this survey purportedly wants to help - will not be able to ‘limit their words’ or ‘choose 100 of them’. This is why Action Based and user-led research models are preferred. Users are distrustful, they are not used to these kinds of forms and interfaces, they would be happier - and far more likely to talk - in a user-led face-to-face forum. What I am saying is that, unlike academic research, [the Commission is] wedding [itself] to one research model: Descriptive Research. By its very nature, descriptive research is extrinsic”.*

- 21.38 It follows that the model requested or specified by the Commission and the instruction received and accepted by Campbell Tickell is misguided and essentially faulty as a way of engaging the Consultation. Whether CRT is behind this mode of operating is unclear but on the basis that the Commission has claimed to be independent this influence may not be an issue. However there is no evidence that has been made available to the NBTA that the Commission has taken advice from specialists in research methodology in Action Based research (with the submission by the NBTA that Campbell Tickell is not such an expert). Conversely the NBTA has taken preliminary advice and the response is that the approach is, in academic terms, faulty.
- 21.39 Dr A also adds *“Descriptive research is designed to avoid real life issues in favour of a snapshot of the users in order to appease them but change nothing that matters.”*  
The NBTA is taken to a proposition that suggests that CRT has tasked the Commission in a manner that is not *bona fide* (not least of which endorsed by the NBTA’s comments on the Terms of Reference as above). From the experience of the NBTA this is a well-trodden path by CRT. The NBTA therefore takes the Commission to task to ensure that it heeds this caution. The Commission is reminded that if its work product can be demonstrated to be partial and biased and CRT then acts on the strength of the findings of the Commission, then this paves the way to judicial review of subsequent steps taken by CRT.
- 21.40 The Commission is also reminded that as a general principle public bodies are given the privilege of establishing policy in a “safe space” (i.e. shielded from public scrutiny and challenge). CRT is a hybrid body, but not a departmental body. It has no ministerial accountability and its contracted reporting structure to DEFRA is confined to supervision by DEFRA of the DEFRA grant (public money). CRT ostensibly has a policy objective to remove the itinerant boat dwelling community licensed under Section 17 (3) (c) (ii) of the 1995 Act as is clear from the Terms of Reference. The concept of “safe space” does in no way remove the obligation on CRT to consult effectively and to heed the responses from objectors. Further if CRT genuinely engages on a compliant basis in developing a TWAO the Minister is required to be consulted and to give directions, which will include *inter alia* an obligation on CRT to consult: a TWAO cannot be developed in secret.
- 21.41 Q 30 of the Consultation (same assumptions as stated in paragraph 21.36 above) states:  
*“The Terms of Reference for the Commission set out that it should seek to apply the following principles in considering improvements and outcomes:  
Fairness  
Clarity  
Sustainability  
Effectiveness”*  
Dr A comments: *“As before, this is [vague rhetoric]. These terms and this question are front-loading CRT concerns, not [those of] users. And it is not acceptable to then require users to focus on what is successful for a licence regulator.”*

NBTA would also like to add that the only context provided for this vague rhetoric is via CRT's 'Terms of Reference' document – linked in the same survey question. This in effect links very vague rhetoric to a document that NBTA perceives as biased, and that in any case – survey responders cannot be expected to associate effectively with the vague rhetoric used in the survey question. Effectively, this survey question could easily be a subversive way of affirming the Terms of Reference document and therefore responses to this question should be discounted due to its vagueness, lack of transparency, and framing-bias.

21.42 The NBTA also notes as follows:

- (a) “fairness” is wholly subjective and in this context, in which the licence holding population of CRT appears to be polarised, an extremely inappropriate concept. “Fairness for the majority” is not “fairness”, as the challenge to the Licence Surcharge, promulgated on 1st April 2024, attests. Further, the NBTA notes that whenever CRT uses the word “fairness” in a policy sense this is invariably the precursor to CRT imposing new conditions and obligations on the itinerant boat dwelling community that are grossly unfair and regularly unlawful. The NBTA notes that in the CRT Annual Public Meeting of 2016 a slide was presented in which the CRT speaker claimed that 64% of boaters licensed under Section 17 (3) (c) (ii) were under enforcement. This followed the introduction of terms and conditions meeting the description of “grossly unfair [to the itinerant boat dwelling community]” in 2015. This conduct has continued ever since as found in the NBTA’s casework activity. The NBTA submits that it is grossly unfair for CRT to target a minority demographic.
- (b) Given:
  - (i) the obfuscation and secrecy surrounding the way that CRT has conducted the instigation of the Commission;
  - (ii) CRT’s conduct since;
  - (iii) the biased nature of the Terms of Reference;
  - (iv) the Commission’s stance that “it is better to continue than fold” in response to the challenge of the NBTA on 13th January 2025; and
  - (v) the faulty nature of the Consultationthe NBTA submits that the last thing that CRT is seeking is clarity.
- (c) “Sustainability” is a word with multiple meanings. In view of the conclusion that the apparent route being taken by CRT is change management rather than a *bona fide* effort to improve CRT customers’ experience of licensing, the only rational conclusion of the meaning of this word is “financial sustainability”. This implies (i) reducing enforcement cost (as attested by the aims of the “Red Tape Challenge” project) and (ii) improving revenue which, the NBTA submits, can be traced back to policy objectives to make the CRT waterways “recreational only” with the conclusion that CRT aims to purge its jurisdiction of the itinerant boat dwelling community. “Sustainability” for recreational users is not “sustainability” for the itinerant boat dwelling community. The term as a statement of policy objective is thus grossly misleading: the policy objective is devious and seeks to subvert the Art 8 rights of the itinerant boat dwelling community.

- (d) “Effectiveness” as a policy objective is a given. CRT is duty-bound to be effective, yet for thirteen years it has not been. However as a new policy objective the use of the word appears, to the NBTA, to be used in a similar way to the word “sustainability” as laid out in Item (c) above.

In conclusion the NBTA submits that the four “governing principles” amount to rhetoric and, in particular, disguise a nefarious agenda that is wholly hostile to the interests and rights of itinerant boat dwellers. In response to Q30 of the Consultation *“Are these the right principles for evaluating the impact of any changes that result from this engagement?”* the answer is categorically “No!” Dr A phrased this rather more stridently.

- 21.43 The NBTA also notes, in contrast to what is present, what is missing from the Terms of Reference, the subsequent position of the Commission and the construction of the Consultation. The exercise is devoid of mechanisms for constructive engagement with the itinerant boat dwelling community in order to propose specific targets, methods for measurability and a timetable for reporting performance against those targets.
- 21.44 Q31 refers to consent for EDI Monitoring. The NBTA notes that there is no explanation of “EDI” (Equality, Diversity and Inclusion). The preamble to Q31 states *“Data will only be used in aggregate form to analyse trends.”* Dr A notes: *“The whole point of EDI - and its legislation - is to NOT aggregate data. It is to individualise it.”* The NBTA notes that Art 14 of the European Convention on Human Rights stipulates *“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... association with a national minority ... or other status.”* The Convention right in focus is Art 8 (respect for home) which is front-and-centre of the work of the Commission. The NBTA notes that itinerant boat dwellers are associated with a national minority because we are a national minority. The NBTA has been advised that the designation “other status” also applies to itinerant boat dwellers. Consequently the experience of itinerant boat dwellers is also front-and-centre and in the view of the NBTA this is a bad experience at the hands of CRT.
- 21.45 Dr A also comments *“Analysing trends is a poorly chosen phrase when you are trying to determine how many of your users have the right to be seen and heard based on compromising personal issues.”*
- 21.46 Dr A also comments: *“The data protection is not clear. If there was a University study there would be much more protocol and paragraphs of writing explanation to assure that data was gathered, held, analysed, stored, and deleted ethically. One sentence is about as bad as it gets ....”* The NBTA takes the view that the Consultation is non-compliant with the requirements of the Equality Act 2010 and the Data Protection Act 2018.
- 21.47 The NBTA notes that depending on the response to Q1 and the number of “issues” that the respondent elects to lay out, the question numbers change. This makes it impossible to address correlations between responses. To have a

questionnaire in which correlations cannot be achieved is professionally negligent.

21.48 Dr A concludes analysis of the Consultation by saying **“Overall, this is a typical business management tool for satisfying the legal requirements to consult users while not doing anything to address how [CRT] should manage itself for users.”**

21.49 The NBTA notes that there is an obligation on CRT (and thus the Commission) to perform a review of the work product and any legislative change proposals that follow, in accordance with the principles established in the ECHR, the HRA and EA 10 and not the “four principles” stated in the Consultation.

## 22 INVALIDITY OF COMMISSION

22.1 On 16th December 2024 CRT announced the appointment of the Commission to examine CRT’s boat licensing under Section 17 (3) (c) (ii) of the British Waterways Act 1995. The Commission was instructed by way of the Terms of Reference dated 10th December 2024 (the “ToR”).

22.2 A detailed review of the ToR was undertaken by the NBTA, including an analysis of the ToR. On 13th January 2025 the NBTA issued its response to the ToR to the Commission members in a paper entitled “National Barge Travellers Association; Response to CRT’s ‘Future of Boat Licensing Review – Terms of Reference’” (the “Response”). The Response lays out how the Commission is in fact a non-compliant consultation. The Response was also sent to *inter alia* CRT, the Minister, the Secretary of State and the Director General of DEFRA responsible for engagement with CRT.

22.3 The inaugural meeting of the Commission was held on 14th January 2025. The minutes of the meeting were finally published by CRT on the CRT website on or shortly after 7th February 2025 although the link to the minutes document was initially obfuscated. Item 3/14 of the minutes makes it clear that the Commission would keep an open mind, in terms of material provided by CRT, further to the Response. On this basis, the minutes record, “The Commission were happy to ratify the Terms of Reference on this basis”.

22.4 The NBTA stands by its assertion that the ToR are biased and inaccurate to such an extent as to undermine the valid basis of the construction of the Commission and as such the Commission is invalidly constituted.

22.5 Clearly it remains open for the Commission to gather evidence and then produce a position statement to CRT that might be at odds with the ToR.

22.6 Given that the Consultation is self-defining it follows that where evidence comes to the attention of the Commission that is at odds with the essential tenet of the ToR but the Commission nonetheless reproduces the evidence and / or an opinion based on that evidence (which it is obligated to do in a consultation, noting the obligations imposed by Gunning and the Sedley Criteria *supra*), this places the Commission outside of the scope of the remit defined in the ToR.

Whether that is relevant to the decision-making of CRT will only become apparent in a subsequent public inquiry or select committee interrogation.

- 22.7 The NBTA has submitted evidence in the Response and is submitting evidence in this paper that refutes the assertions of CRT in the ToR. The NBTA brings to the attention of the Commission the obligations on the Commission accordingly. It is important to note that acknowledging the Response is not the same as addressing the issues it raises, and most of the issues raised by the Response have not yet been publicly addressed.
- 22.8 The NBTA reserves the right to present this evidence in other fora as circumstances arise and does not accept any constraint or limit to the representation of the Response or this paper.

**National Bargee Travellers Association**  
**21<sup>st</sup> April 2025**