

TOWPATH MOORING – Q&As

There is copious information on the Trust's website on this subject spanning explanation of current rules (follow 'mooring' from www.canalrivertrust.org.uk/boating) through to news and consultations on how rules and/or their enforcement might need to be altered to reflect changing use of the canals. We've published a [policy review paper](#) which Trustees and the Council endorsed at the end of September 2012¹. (In September 2011, the transition trustees had set a programme for reviews of all main policy areas, scheduling this particular subject to be covered in Sept. 2012.) By way of context, we noted in this paper that since 2007, the number of boats licensed on a continuous cruiser basis had grown by 37% to c.4,400, compared with 12% growth in the same period for pleasure boats generally.

Scanning canalworld forum shows that some people would appreciate knowing more about the Trust's position on this subject. This note is an attempt to explain things more clearly. Most of the questions or statements in bold below are direct quotes or paraphrases from recent CWF postings – these are put in quotes. If there's any other question you'd like us to answer, please email it to damian.kemp@canalrivertrust.org.uk using 'towpath mooring' in the subject line.

Sally Ash
Head of Boating

New!

“Under what powers are you setting the charge and conditions for extended stays at visitor moorings?”

The Trust (and formerly BW) is the legal owner of the waterways, holding them in trust for the nation. Section 43 (3) of the 1962 Transport Act gave BW (and subsequently the Trust) “power to demand, take and recover such charges for their services and facilities, and to make the use of those services and facilities subject to such terms and conditions as they think fit”.

This is the basis on which we can set time limits, return times (such as 'no more than x days at a given location in a calendar month') and an extended stay charge. The aim in doing this is not to collect revenue but rather to give a boost to compliance with the spirit of mooring rules by providing a credible deterrent to overstaying.

We are looking at additional ways of helping people remember time limits when they arrive at a mooring, such as voluntary use of time disks.

“CRT wants to ‘squeeze out continuous cruisers’”

Categorically not true. Continuous cruisers (cc's) are an increasing proportion of licence holders – a growth market at a time when leisure usage is at best static. All we are seeking to achieve is greater harmony and fairness on the cut. We believe that the way to do this is to make the rules clearer and promote compliance more actively than we've been able to do in the past. We want to engage with existing continuous cruisers who struggle to follow the rules to find ways that they can maintain their lifestyle.

¹ To implement these changes needs money and staff time and we are working up the necessary plans at the moment (November – December is the period when budgets for next year are set.)

Why do we need 'better compliance'?

(1) Because leisure boaters (who are in the majority) and hire boat operators are increasingly reporting congestion at visitor moorings (VMs), meaning that there's less likelihood of their being able to tie up to visit local places.

Regardless of who is overstaying at visitor moorings, we need to increase our monitoring and enforcement of stay times at VMs.

(2) Leisure boaters make less use of the waterways than continuous cruisers and pay significant mooring fees. They find this unfair.

"Overstayers at Visitor Moorings are not necessarily all continuous cruisers"

Correct, and our plans make no presumption that it is only CC's that will be targeted by increased effort to regulate use of visitor moorings.

"CC's have rights that you're ignoring"

Some people claim that there is a basic human right to live on a boat without any restriction on mooring, a view argued passionately by the National Bargee Travellers Association*. The High Court has recently conducted two hearings of their application for a judicial review of our interpretation of the relevant legislation and two separate judges have very firmly rejected their** arguments as having no merit whatsoever. They endorsed our procedures fully as giving adequate protection for human rights and equality. See [statement and link to full judgement](#). NBTA*** has indicated that it will appeal but we have no reason to doubt that this will change anything apart from add further cost and time-wasting to the detriment of the waterways. It is not therefore influencing our plans.

Correction

Mr Nick Brown made a complaint to the Waterways Ombudsman and as a result we have agreed to make corrections to this document:

* The National Bargee Traveller Association (NBTA) has never argued that there is a basic human right to live on a boat without any restriction on mooring.

** Mr Brown wants it pointed out that he made the applications not the NBTA.

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"Not all CC's are residential boaters"

We know this. With only one exception, our plans and policies don't depend on us knowing whether a boat is being used as a primary residence. Residency definitions are notoriously difficult to pin down and we have no need or desire to use bureaucratic processes for trying to record this. It only matters when we need to exercise our 'Section 8' powers to remove a boat if it's the person's only home. So, before initiating any cc enforcement case, the enforcement officer will establish from the boater concerned whether this is the case. For a 'liveaboard' cc, we always go to Court so that a judge has the final say, taking account of human rights and any other relevant considerations. Just to note that so far, judges have always upheld our position.

“Continuous Cruisers seem to be the 'scapegoat of the waterways!' Liveaboard Continuous Cruisers seem to come in for even more criticism, with the presumption being that we all overstay.”

If this statement was directed at the Trust, we strongly refute it. Yes, the law differentiates continuous cruisers and we have to define rules to reflect this, but we apply the rules without any unfair discrimination.

Why does the law differentiate continuous cruisers?

British Waterways brought forward a parliamentary bill in the early 1990s seeking a variety of powers to improve its capacity to manage the waterways. Amongst these were three provisions relating to boating – (1) protecting public safety through compulsory third party insurance for boats, (2) setting boat safety standards and (3) requiring boats to have a 'place where a boat could lawfully be kept when not being used for cruising' (i.e. a home mooring).

The context for this latter clause was fear that growth in demand for boat licences would in time outstrip available mooring space along the towpaths. All clauses of the bill were debated exhaustively including in select committees which took evidence from very active boater lobbies. As a result, section 17 (c) (3)² provided the exception to the home mooring requirement for boats used “bona fide for navigation”. This was qualified however by adding “without remaining continuously in any one place for more than 14 days or such longer period as is reasonable in the circumstances”.

Legislators would not have constructed this clause in the way that they did if they felt that it would be OK for anyone to declare themselves as a bona fide navigator regardless of their movement habits. In other words, Parliament recognised that there was a need to limit localised, long term towpath mooring and this is why judges have unanimously found in favour of BW/CRT when cases against non-moving liveaboard continuous cruisers finally make their way to court.

What do continuous cruisers have to do to comply?

As you'll have noticed above, the Act is not very specific, but as managers of the waterways, BW – and now CRT – has a legal duty to interpret it for operational purposes. This is how legislation always works – those responsible for implementing make the interpretation and set practical rules. The judicial system provides the check to prevent unreasonable interpretations being made.

Our Mooring Guidance for Boats without a Home Mooring explains how we interpret the law – follow the link at the bottom of the page at <http://canalrivertrust.org.uk/boating/mooring/mooring-rules> NABO played an important role in helping us to improve the wording in 2011 following a landmark case in Bristol County Court.

In a nutshell, the guidance says:

- the boat must genuinely be used for **navigation** throughout the period of the licence.
- unless a shorter time is specified by notice the boat must not stay in the same **place** for more than 14 days (or such longer period as is reasonable in the circumstances);
- it is the responsibility of the boater to satisfy CRT that the above requirements are and will continue to be met.

² This states that BW may refuse a licence (“relevant consent”) unless (i) BW is satisfied the relevant vessel has a home mooring or: “(ii) the applicant for the relevant consent satisfies the Board that the vessel to which the application relates will be used bona fide for navigation throughout the period for which the consent is valid without remaining continuously in any one place for more than 14 days or such longer period as is reasonable in the circumstances.”

That's much too vague - why can't you make it simpler and just tell us how far it's necessary to move?

We would if we could but it'd be wrong and we'd be going beyond our powers. "Place" can only be defined within a local context. That's why we're trying to develop local mooring plans in true cooperation with all sections of the boating community. Please do take a few minutes to read what the [guidance](#) says about 'navigation' and 'place'.

In making a judgement in the Davies case in 2010, a Bristol county court judge said that moving to and fro along a 10 mile stretch of the Kennet & Avon Canal did not amount to bona fide navigation. This is a steer but not legally binding for other areas.

So how does enforcement work without specific distances for different areas?

Because we now take regular sightings of all boats moored along the towpath, we will let you know if we think your movements aren't sufficient. This is called our '[pre cc 1' letter](#) and it's meant as a polite reminder. If you increase your movements and start to demonstrate that you are navigating within the spirit of the rules, you won't get any more enforcement hassle.

By the way, some people seem to think that being sighted by one of our data checkers means they've been 'caught' doing something wrong. Just not so. It's simply data gathering to monitor licence evasion and continuous cruiser movements.

If you don't give us confidence that you understand what it means to be a compliant continuous cruiser, you can expect to receive a series of formal warning letters. Mostly, sooner or later, these in practice seem to persuade people to change their cruising pattern, at which point we close down the case.

If people don't take any notice of our warnings, the licence will be revoked and we instruct our solicitors to start the court proceedings to achieve the court order which we (not the law) have determined necessary before we exercise our S8 powers to remove a boat. Again, sooner or later this usually has the effect of persuading the boater to change behaviour. Sadly for the Trust's finances, this all too frequently doesn't happen until we have incurred significant costs. (How can we persuade these reluctant cc's to cruise within the spirit of the mooring guidance or get a mooring? This would release funds available for better canal maintenance and facilities and put a stop to the accidental tarnishing of genuine cc's reputations.)

What if I have a home mooring for just part of the year?

We will monitor you as a continuous cruiser for those periods when you don't have a home mooring. You are responsible for keeping us up to date with your mooring status. However, if you take one of our winter moorings, we will automatically adjust your record for the time when you have a mooring permit

What about if you have a river licence and never leave the River Lee?

Providing you demonstrate that you move up and down the river within the spirit of the guidance, it's not a problem.

"The response to an FOI request earlier this year showed that you have an objective of taking action against all continuous cruisers moving less than 30km during their licence period. Doesn't this then define the distance that CRT thinks is necessary to move?"

No it doesn't. This target was set at the end of 2010 when we were just beginning to consider how best to tackle non-compliance. It triggered a shift in focus for our data checkers and enforcement officers so that the data necessary to define specific staff objectives for tackling non-compliance could be generated. Once sufficient sightings of cc's over a six month period had accumulated, we conducted

our first ever national analysis of boat movement distances and this showed that there were approximately 1,000 boats with no home mooring which appeared not to have moved outside a 5km length during the six months, and a further 1,000 who appeared not to have moved more than 10 kms. Together, this is nearly half of all continuous cruisers we have in our licence records.

Clearly it was not realistic to put such a large number of boats into the formal enforcement process. The exercise proved that the target was unrealistic and this was one of the factors which has led us to the new approach explained in the Council and Trustees' briefing paper. The performance indicator revealed in the FOI answer has been dropped.

I know of boaters who declare a home mooring but never use it – so this is a loophole isn't it?

Yes and no. If we never observe your boat on the mooring you've declared, or we see you repeatedly on the towpath in an area distant from the declared mooring, we will contact you and ask you to confirm your mooring status. We may use powers under the data protection legislation to ask the mooring operator to confirm that you do hold the mooring you've declared. But either way, if you never use the mooring, it amounts to a false declaration which makes the licence invalid. We are just starting to apply this approach where a 'ghost' mooring is suspected.

"In my own experience, the vast majority of those who overstay are those who own boats and perhaps use them a few weeks in a year, but leave them moored on the towpath."

It doesn't matter to us if the boats are cc's or not. What we monitor is how they move and whether they have a legitimate home mooring. As we said above, it's not for us to register how people use their boats

"So now we have guidance ...informing us of changes to the mooring times on some visitor moorings. This is not helpful to boaters in general ..."

We don't change time limits on visitor moorings without canvassing boaters in the area concerned first. This is what Jeff Whyatt did a year or so back for SE visitor sites; it's what the waterway partnership on the K&A is consulting on at the moment; and it's what we hope to do in London as soon as we have an appropriate cc forum to include in the process.

If SE region cc's feel they were not properly consulted as part of Jeff's exercise in 2011, we'll be happy to arrange additional consultation as soon as possible.

Whether changes to visitor mooring times are 'helpful' to boaters rather depends on which boaters you're referring to. Speak to any hire boat operator whose business depends on happy holiday makers or any genuine leisure boater and you might get a different answer. Isn't this all about give and take?

Can you explain the data presented to the SE user group meeting showing number of enforcement cases by waterway?

A possible enforcement 'case' is opened when the enforcement officer has evidence to indicate that there may be a problem. This evidence comes from the sightings data – the records created on the handheld kit which data checkers use to record boats' positions – they enter the boat number, the GPS locator helps them identify the stretch of towpath and this info is uploaded with date and time. We use this data to instigate unlicensed boat action, and to identify boaters with no home mooring who need reminders to move on. If it's a CC, it's only recorded as an 'enforcement case' once the customer has ignored the informal warning letter.

The data that Pete Palmer showed at the user group meeting showed that SE had by far the largest number of cases labelled "CC enforcement". If he'd also shown the total number of CC's recently

sighted in the area however, this would have showed that three other waterways have a higher ratio of CC cases to total CCs sighted.

Waterway area	Individual CC boat sighted	Cc enforcement	Overstayer enforcement	Cc enforcement/total cc sightings
S.Wales & Severn	76	30	170	39%
East Midlands	73	24	105	33%
Manchester & Pennines	171	47	154	27%
South East	1086	267	428	25%
Yorkshire	74	16	138	22%
North West	257	51	211	20%
West Midlands	188	37	133	20%
Central Shires	425	82	257	19%
North Wales & Borders	265	30	180	11%
Kennet & Avon	581	58	187	10%
London	734	67	354	9%
	3930	554	1596	14%

All enforcement officers are given the same objectives and are required to follow the same processes.

“I wonder how many residential boaters live on a leisure mooring. If CRT are going to try and make it work, let them provide more residential moorings that should provide more income, but price them sensibly “

We are trying to increase residential moorings but they need planning permission which is often hard to get. In London and the SE, high land values make offline locations prohibitively expensive. This is what we say in our [general moorings policy](#) (para 12)

Unauthorised full time residential use at long-term leisure moorings may be contrary to planning control. It is for the Local Planning Authority to establish that a mooring is being used as a primary residence, and whether planning enforcement is necessary.

12.1. In response to a planning enforcement notice, we will assess the suitability of the site for residential use against the Trust's policy criteria (see policies 6-9). In the light of this assessment we will either use reasonable endeavours to seek consent from the LPA for the residential use or explore options for ceasing the residential use at the site with the LPA and the boaters concerned...

Although we have been subject to occasional planning enforcement notices in respect of residential use of leisure moorings, no planning authority has pursued the case and no boater has suffered as a consequence of the initial notice. In general, boats with people living on them are a great asset to the waterway, providing the occupants don't overspill onto the towpath and don't cause a nuisance to others. Our experience is that local authorities are increasingly understanding of the challenges facing the Trust in managing use of towpath moorings.

On the final part of the statement, we have a mixed economy on the waterways when it comes to long term moorings. We couldn't possibly provide for everyone and nor should you want this. Private investment and competition acts to prevent upward pressure on prices. Prices achieved in our [vacancy auctions](#) demonstrate this with the majority of berths currently being sold at a discount.

“In the summer months, we cruise extensively. In winter we tend to cruise between London and Watford, never staying more than a week on a mooring. The way CRT is planning to change moorings will effect anyone’s ability to cruise such patterns as my own and many cc’ers do what I do.”

There’s no risk to your lifestyle in the short term, providing that you don’t rely heavily on popular visitor moorings. Longer term, but only after thorough consultation, when the GU south has its own mooring plan, the position might change, but as I hope you’ve recognised from the [policy briefing](#), we’re including provision for established cc’ers to have access to new community mooring permits and we’re prepared to consider other flexible permit arrangements. OK you’ll have to pay but the amount will be reasonable and it will give you a way of remaining legally and fairly within your chosen locality. It’s a facility that will be available only to established cc’s as no one wants gridlock.

By the way, if you qualify for housing benefit, did you know that the licence and mooring costs are covered? Let your enforcement officer or the Waterways Chaplain know if you are having difficulty with a claim.

(Extra note If you are a benefit claimant - when you receive your licence renewal reminder which will usually have a price adjustment, it’s really important for you take it to the Housing Authority for them to reassess it. If you don’t they won’t cover the increase. You need to act promptly to return the completed paperwork to us promptly because if you become liable for the Late Payment Charge the Housing Authority will not cover that extra charge.)

Finally – what our approach actually amounts to ...

For those who don’t want the chore of reading the [full policy review paper](#), here are the headline themes:

1. A **framework** for tackling towpath mooring issues in different areas. Includes a menu of actions to be tailored to local circumstances. Actions to be developed through effective local consultation.
2. Better control of visitor mooring overstaying. Time limits need reviewing and return rules established. Otherwise they’re meaningless. Extended stay charges are seen as the most effective deterrent to overstaying. We’re not doing this to make money. In fact it will cost us, as we have to organise daily monitoring to make the rules stick.
3. Engaging with established continuous cruiser community, particularly liveaboards whose lifestyles require staying within an area. As it’s very hard to do this while complying with the mooring guidance, we want to discuss permit schemes that enable such boaters to ‘buy out’ of the cc requirements.
4. For those who want to remain as cc, we must consult on definitions of neighbourhoods for the purpose of interpreting the mooring guidance more definitively in a particular region.
5. Increased scrutiny and checks for new cc applications to make sure that newcomers know and respect the rules.
6. More effective dialogue with boaters including disaffected cc’s.
7. Where we can, create or encourage investment in new residential moorings, designed for the 30% of cc’s who’d like a home mooring.
8. We recognise that the status quo has arisen because of past relaxed management of towpath moorings. Our new trustees are determined to put things right, in an effective but sympathetic way. They are in the process of willing additional resources for implementing the new approach.

“Pre-cc1 letter”

Our ref: PreCC1b/

Dear

Re: , **Index No:**

Under the terms and conditions of your licence, you must either have a home mooring or continuously cruise in line with the British Waterways Act 1995. The Guidance for Boaters without a home mooring sets out what is required to comply with the 1995 Act. I am enclosing a copy of this Guidance and would ask you to read it carefully.

We have issued you with a licence for your boat on the understandings that:

- (a) you engage in genuine navigation throughout the period of the licence;
- (b) you do not stay moored in the same neighbourhood or locality for more than 14 days; and
- (c) it is your responsibility to satisfy us that you meet these requirements.

Our sightings currently indicate that you have not been moving enough to meet our requirements. They indicate that since your boat has remained between/at , covering a distance of only km.

We are now asking you to commence genuine navigation as described in the Guidance. We will continue to monitor your movements and if it appears that you are continuing to ignore the Guidance, we will commence enforcement proceedings which could result in court action and the potential removal of your boat from our waterways. In these circumstances, documentary evidence of your boat's movements would help and I therefore recommend you begin recording this evidence.

If you need to remain in the same area on a long term basis, we urge you to secure a lawful home mooring. This will save you considerable frustration and save Canal & River Trust considerable expense – money which could instead be spent on improving maintenance and facilities.

Please do not hesitate to contact me if you have any questions.

Yours sincerely

Enforcement Officer

@ .co.uk

Tel: