

**COUNCIL**

**THIRD MEETING OF COUNCIL TO BE HELD ON THURSDAY 27 SEPTEMBER 2012 AT 0900-1300 AT THE BOND, 180-182 FAZELEY STREET, BIRMINGHAM, B5 5SE**

**AGENDA**

- 0900-0930** Registration and Coffee
- 0930** Welcome and Update Tony Hales, Robin Evans
- Apologies
- Notes of the Second Meeting, 4 July 2012, for agreement and Matters Arising
- 0945** Non-Compliant Continuous Cruising - Paper Sally Ash  
- Presentation and Discussion
- 1045** COFFEE
- 1100** The Trust's approach to Health & Safety – Paper Tony Stammers  
- Presentation and Discussion
- 1200** Canal & River Trust Governance – Paper Nigel Johnson  
- Report and invitation for feedback
- 1230** Strategic Priorities Tony Hales  
- Discussion
- 1300** Date of Next Meeting Wednesday 20 March 2013, venue to be agreed

**FOLLOWED BY LUNCH**

- 1400** Annual Public Meeting, in The Bond Warehouse

**CANAL & RIVER TRUST COUNCIL MEETING****THURSDAY 27 SEPTEMBER 2012, 0930-1300, HELD AT THE BOND COMPANY, 180-182 FAZELEY STREET,  
BIRMINGHAM, B5 5SE****COUNCIL MEMBERS PRESENT:**

Charlotte Atkins, Chair Central Shires  
Chris Bailey, Employee Representative  
John Best, Chair South East  
Danny Brennan, Chair East Midlands  
Peter Brown, Railway & Canal Historic Society  
Ivor Caplan, Private Boating Representative  
Fleur de Rhe Philipe, Chair Kennet & Avon  
Ann Farrell, Private Boating Representative  
Brian Fender, Chair London  
David Gibson, Ramblers Association  
Tony Hales, Chair Trustees  
Jack Hegarty, Chair South Wales & Severn  
Clive Henderson, Private Boating Representative  
Councillor Ken Hudson, Local Government Association  
David Kent, The Angling Trust  
Mark Lang, Chair All Wales  
Tony Matts, Boating Business Representative  
Walter Menzies, Chair Manchester & Pennine  
Laurence Newman, Chair Museums & Attractions  
Mark Penny, Chair North East  
Tamsin Phipps, British Canoe Union  
Nigel Stevens, Boating Business Representative  
Vaughan Welch, Private Boating Representative  
Neil Wyatt, The Wildlife Trusts

**IN ATTENDANCE:****TRUSTEES**

Lynne Berry  
Jane Cotton  
John Dodwell  
John Bridgeman

**EXECUTIVE DIRECTORS/MANAGEMENT TEAM**

Robin Evans  
Nigel Johnson  
Vince Moran  
Philip Ridal  
Simon Salem  
Roger Hanbury  
Sally Ash  
Tony Stammers

## 1. Welcome and Update.

### 1.1 Tony Hales

TH welcomed everyone to the third meeting of Council. The Trust was now 3 months old and developing well.

The Appointments Committee was now in place: there had been 3 Council nominations - Steve Broomhead, Clive Henderson and Alison Ward - who were appointed uncontested. Trustees had confirmed their 3 appointees - Lynne Berry, John Bridgeman and Tom Franklin. One of their first tasks would be to consider any gaps in representation on Council.

TH and Lynne Berry had held review meetings with the Partnership Chairs. All were at different stages of development and progressing well with a real sense of energy and purpose. Partnerships are beginning to make new connections with communities, businesses and universities. The Strategic Waterway Plans are taking shape, making use of the proposed framework with differences where necessary to reflect local preferences and requirements.

The Advisory Groups are starting their work, providing support to the management team in their areas of specialism – Angling, Education and Young People, Environment, Freight, Heritage, Volunteering, Navigation. The British Waterways Advisory Forum (BAAF) would soon be remodelled as the National Stakeholder Forum. Over 200 volunteers are involved in Governance and Advisory Groups; the Extranet and other communications are being developed to support their work.

Government is a vital partner and funder. Following the recent reshuffle, Owen Patterson was now the Secretary of State for Environment Food and Rural Affairs. The future of the Environment Agency Navigations will be an upcoming matter for consideration.

TH had continued to get out and about to engage with enthusiasts and activists. Navigable waterways and accessible towpaths are at the heart of everything we do. The Trust would be spending about £50m in the course of the current year to support this objective. TH wants to build wider engagement and support for the waterways and a strong base of Friends and advocates. There was frustration with a narrow group who were relentlessly critical of all the Trust sought to do. Nonetheless, he was excited and invigorated by the evident support for the Trust and the opportunities ahead.

TH then outlined the key items on the agenda:

- Non-Compliant Continuous Cruising – a difficult issue which attracted strong views and which Trustees would debate at their meeting the following day
- Health and Safety – the number one priority for the Trust and a matter kept under regular review by Trustees
- Strategic Priorities – an opportunity to look beyond the practical matters of the day and to consider medium to long term priorities

Finally, TH paid tribute to Jim Stirling, Technical Director, who would be retiring in October. Jim was currently, at his own expense, in China for the World Canals Conference. In a remarkable career in waterways, Jim had put the Trust's asset management on a secure footing, been a key player in the contract negotiations with Defra, and led the restoration of the Lowland Canals in Scotland where the Falkirk Wheel now stood and as an accolade to his work. Council expressed their appreciation with applause.

## 1.2 Robin Evans

RE set out his 'inside' perspective on the first period of the Trust's work.

The mood of the organisation was positive; there was pleasure in that we had 'arrived' in the new Trust and staff were settling into the ethos of the new organisation. A key part of this was the new governance which was a big change, but one which was being absorbed into day-to-day working as staff adapted to and saw benefit in the new arrangements.

The necessary formal accounting work to complete the transfer of BW in England and Wales to the Trust, and the separation in Scotland, was almost complete. All financial planning for the change had been cautious and it now seemed likely that the outturn may be better than planned.

The Trust is trading well and somewhat ahead of expectations on income. Operational expenditure is currently below budget but this will be recovered by the end of the year.

RE explained that the contingency would be called on to meet the exceptional costs arising from the breach on the Trent and Mersey near Dutton on 26 September. Initial estimates suggested costs of *circa* £1.5m.

Looking ahead, RE was cautiously optimistic that the maintenance budget for 2013/14 would keep abreast of inflation. This was a significant improvement on the previously declared position and would be confirmed in the budget round.

On fundraising, RE reported that 1200 Friends had been signed-up and 5 of the local project appeals were fully funded. The Fundraising team were learning fast about the offer, best sites and the project appeals. The delay in the launch of the Trust meant 15 weeks of spring and summer had been lost for fundraising but this was a very encouraging start. There was also an active programme to secure additional corporate sponsors which looked promising.

There was also encouragement in the volunteering programme which was developing well. Five hundred had applied to be Volunteer Lockkeepers and 200 had been appointed to 60 sites. The volunteers would add greatly to the customer service offered to boaters and towpath users.

The new website had received just under 500,000 visits, 50% to the boating and waterway pages, 48,000 to the volunteer pages, 30,000 to events and 24,000 to our project appeals. There was still a long way to go but all of this was of considerable encouragement to the Trust.

## 2. Apologies.

Steve Broomhead, Chair North West  
Martyn Brunt, Sustrans  
Jim Forrester, Chair North Wales & Borders  
Peter Mathews, Chair West Midlands  
Ross Murray, Country Land & Business Association  
Alison Ward, Welsh Local Government  
John Yates, Institute of Historic Building Conservation

## 3. Minutes from last meeting.

The minutes from the last meeting on 4 July 2012 were approved and there were no matters arising.

#### 4. Non-Compliant Continuous Cruising.

**John Dodwell** introduced the session. The concept of Continuous Cruising was established by the 1995 British Waterways Act but did not provide the practical guidelines or control measures for its management. Continuous Cruising had grown by 37% at a time when boat licences had grown by 12%. Six hundred continuous cruisers were moving less than 5km and 2000 less than 10km during the period of their licence. The current situation was restricting users' enjoyment of the waterways when visitor and short-term moorings were misused.

**Sally Ash (Head of Boating)** introduced her [paper](#) detailing the background, issues and potential solutions.

##### Discussion

In the discussion, Council members made a number of key points:

- Users perceive a growing problem and enforcement on visitor moorings is a priority. It was noted that this is a large problem caused by a minority - 2,000 out of 35,000 boats
- Resources available for enforcement will always be limited. It will be important to get to a point where peer pressure/self-policing makes significant contribution
- Clearer communication of stay duration and return periods on site and in other communication channels will build peer pressure, underpin any remedial strategy
- New Continuous Cruisers should "sign up to navigation" with a summary plan for the year and licences clearly distinguished from those with registered moorings
- There is scope for greater use of technology to log boat movements, linked to a Continuous Cruising Licence
- It was suggested that there should be a graduated scale of charges with an allowance of, say, 20 days pa on specified moorings, graded charges and penalties for excess periods
- There is potential for volunteers to help in identifying problems/hot spots if not serious enforcement
- The adequacy of legislation was questioned. Nigel Johnson explained that securing new legislation is a very lengthy, costly and uncertain process. It was not practical to base controls on measures such as fit and proper person, or environmental considerations other than those already available
- There was support for affordable community/longer-term moorings paralleling the provision of affordable housing, subject to local authority support – with the potential for income generation for the Trust and Local Authorities. Concern though that permitting longer stays deferred rather than resolved the problem
- Non-compliant Continuous Cruisers take mooring space, car parking space and turn off local communities. Negative perceptions and problems risk alienating Local Authorities who have a key role in funding long term. Authorities will only provide funds if there is public support for the canal (eg, K&A)
- The formation of the Canal & River Trust created an opportunity to "reboot" the issue and draw a line under previous approaches
- The problem requires an elevated response with strengthened policy, greater use of technology, use of bailiffs to demonstrate credible civil enforcement. Action by Trustees would be required to enable and support such an approach

Council strongly supported the multi-faceted response to management of non-compliant continuous cruising with stronger enforcement on a national scale. There was scope for Partnership Chairs and members and Council Members to play a key role in advocating a robust policy nationally and locally, to the media and stakeholders.

TH welcomed the views of Council and the level of support which would be helpful in the context of the Trustees discussions. He asked that Members should email any further responses to him, or to Roger Hanbury and Sally Ash. **ACTION ALL**

## 5. The Trust's Approach to Health and Safety.

**Jane Cotton** introduced the session highlighting the high priority placed on safety by the Trustees from moral, legal and financial perspectives. The aim of the session was to raise awareness of the importance of Health and Safety in all aspects of the Trust's work and to seek endorsement of the approach taken by the Trust.

**Tony Stammers (Head of Safety)** then introduced his paper.

The high priority placed on the safety of users, volunteers and staff, demands a major commitment of resources to meet and fulfil our obligations and continuously improve performance. "The Trust is never satisfied for its people and customers when it comes to safety performance"

Management of **public safety** presents a number of challenges:

- People can visit 24 hours a day, 7 days a week and engage in almost any activity
- The Trust wants to encourage access to be as wide as possible
- The law requires us to act proportionately when risk is reasonably foreseeable
- Principle of minimum intervention. Heritage is important and safety improvements must be sympathetic

The Trust had a well-established process of Visitor Risk Assessment:

- 2000 miles assessed between 2006 & 2011 and the risk reduction plan implemented
- Monitored monthly by length inspections
- Reviewed on 5-10 year cycle or as a result of incidents

Nonetheless, there is a pattern of about 60 fatalities each year involving members of the public. All are reviewed by the Trust and lessons learned help reduce future risks. The Trust also works with the local authorities and police to manage activities and reduce risks.

There are also 200 to 300 other incidents on waterways each year of which 10% are infrastructure-related. The number of incidents is declining as a result of a focus on infrastructure maintenance and improvement despite increasing visitors.

Public liability claims range between 70 to 80 per annum. The number of claims repudiated is increasing, backed-up by risk assessments but total compensation payments and costs show an upward trend.

TS outlined action arising from recent fatalities. For example, a fatality at Stourport prompted a review of 6000 lockbridges nationally and at 29 improvements were made to reduce the identified risk.

In relation to **employees, volunteers and contractors**, the law requires the Trust to:

- reduce risks to as low as reasonably practicable
- provide working environments free from health risks with adequate welfare
- provide necessary information, instruction, training and supervision
- maintain plant and equipment in safe condition
- provide contractors with relevant information for them to manage risk to their employees

Trust **employees** work in small dispersed groups with significant autonomy undertaking a wide range of tasks. Promoting safe personal behaviour with self and team checking is vital as is the provision of training, competence, accreditation and management audits. Communication of expected standards, performance achieved and continuous improvement is relentless. This was demonstrated by a video on Safe Behaviour which was played as part of the presentation.

Annual total injuries, including reportable injuries, lost time injuries, first aid cases and injuries not requiring treatment, show a downward trend over the last 6 years. Specific targets for reduction in areas such as lost time injuries, manual handling injuries and slip, trip and fall injuries in the current year, are all on track.

The Trust treats **volunteers** who work directly for us as “employees” in respect of health and safety. Volunteers are either supervised by Trust employees or their organisation where they have achieved self-supervising accreditation – 30 groups have done so and others will follow. Volunteer safety performance is better than for staff with 1 minor injury per 5000 days.

**Contractor** safety has improved in recent years since 3 tragic fatalities in 2004. The “Achilles Verify” contractor pre-qualification has been introduced and contractors unable to meet high safety and environmental performance standards are no longer used. A small number of National/Regional contractors now deliver the majority of work with gains in efficiency and safety and specialist contract managers ensure the quality and safe delivery of services.

### **Discussion**

The discussion reinforced many aspects of the approach highlighted in the presentation and video. Communication and training were seen as key to developing safety management performance.

It was recognised that signage, education and physical measures all had a role to play in ensuring waterways were safe and the balance between the three was seen as important, particularly on heritage structures.

A graduated response was appropriate-related to risk; education was vital to build public respect for the waterways, to raise awareness and demonstrate hazards associated with waterways and specific structures.

Signage could highlight specific risks but signage alone does not meet legal requirements and is neither effective nor desirable.

Physical barriers can effectively highlight a hazard and reduce risk. The most intrusive barriers were appropriate where there was a foreseeable risk of fatality.

It was noted that a combined campaign of education and signage had dramatically reduced angling accidents associated with overhead powerlines and that good education and signage help to build confidence and open-up access to new users.

There was concern about the risk to novice boat hirers. The Trust had a large body of experience arising from accidents and incidents. It would be very useful for Boat Hirers to have a digest of experience to support/inform handover to hirers.

Reporting of near misses was a part of the learning safety culture. It was suggested that the Trust should clarify no-fault reporting, as is the practice for Network Rail, to encourage reporting as part of a campaign to promote a range of channels for incident and accident reporting.

Council broadly endorsed the approach taken by the Trust. TH asked for any further comments to be made to him, Tony Stammers or Roger Hanbury. **ACTION ALL**

## 6. Canal & River Trust Governance.

**Nigel Johnson** briefly introduced his update paper.

**NJ** explained that the **Trust Rules** are a second tier in the constitution of the Trust, more flexible than the Articles of Association. The Rules set out the constitution for Council and the Partnerships.

In terms of style they could be highly prescriptive, in the tradition of local government or less formal as was usually the case in company law. The latter was favoured but the views of Council as to whether the balance was right for the Trust was sought. For example, the process for the election of members to the Council was not prescribed with discretion given to the Appointments Committee to define as they saw fit.

**NJ** explained the process for the approval of the Draft Rules. They would be discussed by Trustees in detail at their November meeting and submitted to the Secretary of State in December for approval. Once agreed by Trustees, in the light of any amendments from the Secretary of State, they would return to Council for adoption at the meeting in March 2013.

**NJ** tabled the first draft of the **Trust Handbook**. This was intended to be a user friendly guide to the Trust which had been drafted with the assistance of the Compass Partnership. It would be available online and subject to periodic updates. It did not require approval but feedback on format, useability, language and scope would be welcome.

In **discussion**, a number of points were raised relating to the Rules and Handbook:

### Rules

- The language of paragraph 2.3 relating to the Partnerships - alternative would be proposed
- The scope of paragraph 2.7 should include procedures for removal of a Partnership Chair as well as a Council Member

### Handbook

- The organogram should include the All Wales and the Museums & Attractions Partnerships
- The *ex officio* status on the All Wales Chair on the North Wales & Borders and South Wales & Severn Partnerships is no longer considered necessary

Council welcomed these two documents and it was felt that the level of prescription for the Rules was about right. However, members were invited to further consider both documents and to provide feedback to **NJ** or **RH** by the end of October. **ACTION ALL**

## 7. Strategic Priorities.

**Tony Hales** introduced the discussion with reference to the document, *Shaping our Future*, which sets out the Trust's strategic priorities.

He depicted the Trust's priorities as a dartboard: infrastructure integrity at the centre; legal obligations for safety, navigation and towpaths as the next ring; then compliance with the government contract, and the outer layer the outward facing aspirations for *People Nature and History*.

It was important that in its totality, the Trust created something that lives and provides a connection with people in the wider world, through access, volunteering, enterprises and environmental priorities. He asked Council to look above the detail and consider how the Trust might shape and develop its priorities to meet this need.



### Discussion

The discussion highlighted a number of suggestions:

#### Heritage and Environment

- We should elevate “recognition” of heritage and environment, to more exciting actions, for example, promote, enjoy, encourage, inspire

#### Volunteering

- The focus on volunteering to include development of transferable skills and qualifications
- Experience at the National Waterways Museum may provide a useful template for integrating volunteering into all aspects of the Trust’s work
- Extend role of volunteers to inform users on key matters such as water conservation at locks

#### Participation and Engagement

- Need to reach out to new audiences, “colonise the minds of others” outside the existing family who lack awareness. Council and the Partnerships have a key role in leadership
- Engagement with young people is key. Experience points to successful engagement through angling, paddle sports, volunteering and work experience
- Uniformed organisations are a key group, eg, Guides who have a new badge - “Wild Wet Wonderful Waterways” but do not allow overnight stays on boats under 9 years
- Interpretation - extrapolate Museums’ interpretation capability onto the network to provide much wider appreciation, understanding and engagement with the waterway heritage and environment, and the Trust
- Upgrade *Keeping People History and Nature* to more proactive action
- Is there scope to capitalise on the inspiration the Olympics provide for activity on and around the waterways - walking, cycling, paddle sports
- Focus on local solutions, stretch-by-stretch, bottom up, connecting with communities and people
- *People Nature and History connected* but people should be the first priority

#### Green agenda and economy

- Identify clear ambitions for green transport
- Retain focus on economic benefits which is vital, for example, Manchester City Centre

Council members were invited to provide further feedback to Roger Hanbury. **ACTION ALL**

#### 8. Closing Remarks.

TH thanked Council for their contributions to a productive meeting.

#### 9. Date of Next Meetings.

**Wednesday 20 March 2013, Manchester, with an optional morning site visit . Please note this is a change of date to that previously announced.**

**Wednesday 18 September 2013**, London or Leeds.

**Tony Hales**  
Chairman

## COUNCIL MEETING – 27 SEPTEMBER 2012

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### Briefing Paper – NON COMPLIANT CONTINUOUS CRUISING

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##### Executive Summary

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2. Licensing & moorings policy regulations – overview
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4. Current local projects
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##### APPENDIX A - A SHORT CHRONOLOGY OF PAST CONSULTATION 2002 - 2012

##### APPENDIX B – LEGAL BACKGROUND – MORE CONTEXT

##### APPENDIX C – THE ENFORCEMENT PROCESS

##### APPENDIX D – HOTSPOT MAP OF PRIORITY NCCCs

#### EXECUTIVE SUMMARY

This paper provides a briefing on our current policies for achieving fair sharing of increasingly scarce mooring space along the towpaths in ‘hotspot’ locations around the waterways. The British Waterways Act 1995 enables those using their boat *‘bona fide’ for navigation and not staying in a ‘place’ for more than 14 days* to avoid the obligation to secure a home mooring – somewhere where the boat may lawfully be kept when not being used for cruising. Since the passing of the legislation, the number of boat owners taking advantage of this provision grew steadily and has accelerated markedly since 2007. One consequence is the emergence of informal residential boating communities along certain stretches of our towpaths in urban areas of the south and east, largely in response to the housing shortage.

We have put in place guidance for boaters without home moorings which make clear our [interpretation](#) of the legislation, but achieving satisfactory compliance with it is a goal that has persistently eluded us. The legal process is sound but extremely slow and costly. The problem has grown up over 15 years so that we now have substantial clusters of long term residents along some towpaths comprising people whose fundamental life style would be threatened by any change in our policies to tighten up implementation of the statute. The matter is now the cause of tension between the growing band of ‘non-compliant continuous cruisers’ and leisure boaters who report being deprived of the opportunity to tie up at popular short term moorings during their cruises.

The Trust now needs to be clear on our way forward. As well as setting out essential context, this paper outlines a number of generic options for dealing with problems locally. They focus on strategic management options rather than continued reliance on legal powers, although the latter will continue to provide the last resort credible sanction against non-compliance. They will require increased effort as we start to design and



implement local mooring plans tailored to different areas and locations, and there may be short term cost implications. Some of the proposed measures would however be expected to generate new income. Brief summaries of how we are trying to apply solutions on the Kennet & Avon Canal and in London are set out and the paper ends with a short discussion of resource implications.

## 1. BACKGROUND

Income from boat licences, moorings and associated activities accounts for over 15% of our annual turnover. It has been subject to strong growth over the past decade arising from both volume and above inflation price increases. The number of boats using our network on a long term basis grew at an average rate of c.825 each year in the decade from 2002 and now stands at nearly 35,000.

Growth in residential use of boats has been particularly strong. For many it's a niche lifestyle choice and for others, the need to secure affordable accommodation in areas close to employment opportunities is the driving factor. As a navigation authority, we are not concerned with how people use their boats, only that they comply with licensing rules. Our job is to ensure that the navigation and associated facilities are available to all licence holders.

In much the same way as parking control is an essential feature of smooth operation of highways, maintaining the amenity of the waterways requires some element of mooring control along the towpaths. Legislation in 1995 gave us powers to require that boats should have a lawful home mooring, unless they were used 'bona fide' for navigation. Shorthand for this is that they 'continuously cruise'. The legislators decided (and BW agreed) that it was reasonable that boats engaged in continuous journeys did not need to have a home mooring. Precisely what was meant in the Act by '*bona fide navigation*' and '*without remaining continuously in any one place for more than 14 days or such longer period as is reasonable in the circumstances*' has been the subject of increasing and sometimes acrimonious debate within the boating community since 1995.

### Quick facts

- *In 2007, we had approximately 3,200 boats licensed as continuous cruisers. In July 2012 the figure was 4,400, an increase of 37%. This compares with a 12% increase in total licences issued over the same period.*
- *Continuous cruisers currently account for c.13% of all licences*
- *Analysis of our dataset of all boat sightings between 1st Jan and 31st Aug 2011 suggested that over 2,000 boats coded as continuous cruisers had moved less than 10km during the period.*
- *In spring 2012 we re-ran our analysis to concentrate on those boats which moved less than 5 km and we are now concentrating on approximately 600 boats which move the least and are regularly sighted on visitor moorings. The appended map shows geographic concentrations of these boats.*

The problem we face is in enforcing our interpretation of this widely drawn legislation, when the only sanction provided within our statutory powers is to remove the boat from the waterway. In the case of a residential boater, this would effectively mean loss of their home. We have no desire to make people homeless, but neither can we fulfil our statutory obligations of preserving waterway amenity for public benefit in the face of large scale disregard of our interpretation of the legislation (which court judges find reasonable).

Tension has been rising across different sections of the boating community about the number of boats claiming 'continuous cruiser' status without appearing to be 'bona fide' navigators.

On the one hand, we have the (relatively new and small) National Bargee Travellers Association (NBTA) completely rejecting our interpretation of the legislation for operational management purposes. They believe that any boater has the right to settle on the towpath within a specific area without the



need to secure a home mooring. Our attempts at constructive engagement with them to establish how they reconcile this unconstrained 'right' with our statutory duty to preserve wide public benefit and amenity have largely failed. Their activities include campaigning against our moorings policies on a number of niche websites and internet groups, submitting successive complaints and requests for detailed information (under FoI) and providing support to boaters who are within our enforcement process for failing to demonstrate compliance with mooring guidance.<sup>†</sup>

The 2,000 strong Residential Boat Owners Association also represents residential continuous cruisers (and those with a home mooring) and takes a constructive approach to the subject and has recently prepared its own document on the subject (<http://waterwaywatch.org/rboa-produces-a-paper-on-continuous-cruising/>)

The Inland Waterways Association (representing c.27% of boat licence holders) is increasingly vocal in defending the rights of leisure boaters to enjoy access to towpath moorings for short periods during a cruise. They have recently called on us for "[action on continuous moorers](#)".

Appendix A provides a short chronology of past consultation on the subject.

#### Correction

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

<sup>†</sup> The FoI requests were made by members of the NBTA in an individual capacity and not by the NBTA itself.

## 2. LICENSING & MOORINGS POLICY/REGULATION - OVERVIEW

All boats must have a licence (average cost £700 p.a.) or river registration (average cost £400 p.a.) and EITHER a home mooring or be declared as a continuous cruiser in which case only the licence fee or river registration is paid. Licences are subject to contractual terms and conditions which are consistent with our interpretation of our statutory powers.

### *The legislation*

Section 17(3)(c) British Waterways Act 1995 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.

The language of the Act is generic and, as with all statutes, requires interpretation. We therefore developed guidance for customers based on professional legal advice, including from Leading Counsel, which we believe reflects the correct legal interpretation of the Statute. The Guidelines updated in 2008 were considered in the Bristol County Court in 2010 in the case of British Waterways v Davies. The Judge expressly found that Mr Davies' movement of his vessel every 14 days (whilst remaining on the same approximate 10 mile stretch of canal between Bath and Bradford on Avon) was not bona fide use of the vessel for navigation. We updated the guidelines in 2011 to reflect this judgement.

In summary, the guidance says:

1. the boat must genuinely be used for **navigation** throughout the period of the licence.

2. 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);
3. it is the responsibility of the boater to satisfy CRT that the above requirements are and will continue to be met.

A more detailed treatment of the legal context including our interpretation of 'navigation' and 'place', which is critical for operational implementation of the legislation, is at Appendix B

#### *Implementing the legislation – enforcement overview*

We employ an enforcement team of 50 people at a cost this year of £2.18 million of which 69% are staff costs, 16% are contract costs (for 'Section 8' boat removals, storage and disposal) and 9% legal fees and court costs. The team's primary function is to maintain a low level of licence evasion, which reached unacceptably high levels before 2009. Now that this is under control, greater focus is being applied to reduction of non-compliant continuous cruising.

During August 2012, the enforcement team had some 640 NCCC cases in process. Because non-compliance is a breach of licence conditions, our standard remedy is to revoke the licence and remove the boat from the waterway. This is a long process which is further complicated when the boat is someone's primary residence, in which case, we obtain a court order before taking possession in order to avoid claims of unreasonable behaviour. We have never been refused such an order in respect of an NCCC, although the number of cases reaching the final stage of process is small. Further detail of the processes we follow, from gathering of evidence of movement patterns over a sustained period through to submission of cases to our solicitors is contained in Appendix C

### **3. GENERIC SOLUTIONS**

We believe that our core policies and enforcement procedures are sound and based on good legal advice. However, while good enforcement is necessary for the credibility of our processes, it is not in itself sufficient to achieve the compliance levels we need to satisfy the great majority of our boating customers and to ensure the harmony amongst waterway users that's needed to maximise public benefit. The process is unavoidably slow and expensive and can never be expected to achieve significant change in behaviour by the considerable number of boaters who appear to be disregarding our rules. We therefore need to expand our toolkit to address the long standing non-compliance by a sizeable cohort of continuous cruisers who have established their homes along the towpath in particular areas.

Unofficial communities of residential boaters have taken root over the years because they observed that BW seemed unable or unwilling to take action to move them on. Some – or maybe many – of these do not see themselves as 'boaters' in the navigational sense – they have chosen to live on a boat not in order to navigate but to stay in the particular locality where their family, work and support arrangements are. Demanding that they follow mooring guidance at this late stage would be futile.

We have come to recognise over the past 18 months that constructive engagement with NCCCs will be an essential ingredient of sustainable solutions and we have started work in two waterway areas to try out slightly different approaches. These are summarised in section 5 below. The difference in approach arises from particular local circumstances, but both are likely to draw on at least some of the following generic solutions.

#### **i. Communications**

- Perception (and reality) is that our only one to one communication with NCCCs has been through formal standard warning letters and notifications which of necessity set out the legal position. Only relatively recently have we introduced an initial, more informally worded letter,



but even this is probably not the easiest of read for some boaters. To broaden understanding of the reasons for our rules, we need more face to face contact with the boaters concerned.

- We have a sadly poor understanding of NCCC demography because as licence holders, there's a reluctance to respond to our annual boater survey (probably for (unfounded) fear of being identified.). Based on informal observation, a number of groups are identifiable, such as young families with insufficient income to afford conventional homes; singles of all ages and employment profiles but with possibly a trend amongst young professionals to choose a boat to live on as their first step on the housing ladder; and we appear to host a number of disadvantaged people struggling to 'survive' in today's increasingly complex world and who see the waterways as an escape from rules and regulations. To support the latter, the Salvation Army has re-invented (after a 40+ year break) a Waterways Chaplaincy service in partnership with the charity, Workplace Matters. This has been operating successfully in the Hertfordshire area for the past 3 years, working closely with our local enforcement officers. In established NCCC hotspot areas, community support and engagement of the type provided by this chaplaincy service is likely to be an important component of any solution, albeit with a broader focus to include spreading understanding of the Trust's position and explaining new mooring options designed to reduce non-compliance.
- We need to be clearer through signage and leaflets about what it means to be a continuous cruiser in a particular hotspot area. Our generic guidance document is not locally prescriptive, but it is prescriptions that many boaters claim to need. To be enforceable, such local prescriptions must have the endorsement of our local partnerships.

## ii. Differentiation

- In engaging with existing NCCCs, we must be clear in developing customised arrangements, designed to enable them to continue living aboard in a particular area without a conventional home mooring, that we are offering this only to boaters already established as resident in the locality. It is not a policy option that should apply to new arrivals. Already established residents may be eligible to take up a newly defined 'community mooring permit' (subject to conditions), but the permit will not be assignable to any other person. By this means, over a period of, say, 10 – 15 years, the number of permits would be expected to decline naturally as people move on or into land based accommodation.
- In specifying this, we will of course continue to welcome genuine continuous cruisers providing they comply with mooring guidance. We recognise and value the benefits that occupied residential boats provide to the waterway scene. Generally, occupied boats are preferable to unoccupied ones as they add life and a sense of security to the area. But the continued ad hoc emergence of unofficial residential communities along lengths of towpath is something that we wish to avoid.

## iii. Visitor moorings

- Visitor moorings are differentiated from casual moorings along the towpath (where the time limit for staying in any one place is 14 days) by (as a minimum) welcome signs, shorter time limits and mooring rings. They are typically located at access points convenient for nearby shops and services. What they currently lack is an indication of permissible return times. This of course makes it difficult to enforce since boaters may legitimately move away for as little as 24 hours and then return. We are planning new signage which will make clear the total number of days in a calendar month that a boater may make use of the visitor mooring.



- Regardless of whether or not the boater has a home mooring, general respect for spirit of visitor mooring time limits is important as the number of boats increases and reports of congestion at these locations grows. With a total of some 870 visitor mooring sites around the country, the task of monitoring daily use as a credible deterrent to boaters from overstaying would require a substantial increase in data checker budgets. We did however complete consultation on the principle of extended stay charging in 2009 and are now in a position to introduce monitoring and invoicing for overstay permits in hotspot areas, if we increase our monitoring resources. We do not expect income from permit sales to match the monitoring costs. We have considered the possibility of seeking volunteers for this work but in hotspot areas, tensions amongst boaters would make this an unattractive volunteer proposition.

**iv. Increased provision of long term residential moorings**

A little under a third of continuous cruisers indicated in our recent national boater survey that they would like to secure a long term residential mooring. We briefed the BW board on this subject in July 2011 and Stuart Mills is now leading a project to develop additional sites in London and the South East. The planning environment has eased following a statement by the Housing Minister in August 2011 encouraging local authorities to grant consents, pointing out that these moorings would qualify for the New Homes Bonus (and therefore additional government grant to the authority).

**v. Greater flexibility in mooring options**

To cater for boaters who like to continuously cruise during the summer but remain in a fixed location in winter, we have developed the practice of offering winter mooring permits bookable by the month along up to 50% of the length of some visitor moorings between 1<sup>st</sup> November and 31 March each year. Many commercial marinas of course also offer this facility, but tend not to attract residential boaters. It is mooring along the towpath that tends to be the choice of most continuous cruisers. For this reason, local solutions might also embrace the offering of shorter term mooring agreements by our commercial moorings business, particularly as demand for our three year and one year agreements has weakened with the onset of recession.

## 4. CURRENT LOCAL PROJECTS

London (Regents Canal, Hertford Union and lower River Lee) and the western section of the Kennet & Avon are the two largest hotspot areas where we have been seeking solutions over the past two years. Brief updates on these are below.

### London and River Lee

We regularly observe around 550 boats without home moorings moored along the towpath of London's waterways (Regents, Hertford Union and River Lee).

Our project objectives here are to achieve:

- "A vibrant waterway, well served and well connected, with everyone getting on well."
- Changed mindsets: Better engagement and respect between users. A sense of the river as a (collection of) neighbourhoods. Improved stakeholder perceptions of boating and boaters. Improved perception of CRT as the navigation authority.
- Fair sharing: Agreed understanding of what 'capacity' means and fair sharing of desirable space between users and uses, leading to an improvement in mooring provision, quality and choice for visitor, leisure and residential moorings.
- Social enterprise: a new approach to improve facilities, meet needs and improve the river corridor

- Overall cost reduction: Net reduction in costs for the Trust compared to current spend + liabilities. Reinvestment of surplus into the project objectives and/or the Trust's charitable objects.

We have retained social enterprise and community engagement specialists, Locality (formerly the Development Trusts Association) to lead the supporting work programmes. Progress is being made, but is very slow, with an underlying difficulty being that of establishing an effectively constituted body which can speak for people whose motivations and objectives vary widely. As a means of building trust and understanding, we have recently entered into a short term 'meanwhile' lease for the (publicly funded) Waterside Centre at Stonebridge Lock on the Lee in Tottenham. Under this, London (residential towpath) boaters in partnership with three other local community groups will as tenants, develop a sustainable business plan for optimising use of the centre. A 'listening' programme is underway, led by community organisers funded through the government's 'big society' programme with community conflict resolution techniques being applied. The disruption to mooring arrangements caused by the Olympics has slowed progress as many boaters moved away from the area, but we are hopeful that a London Boaters group will soon achieve incorporation and the capacity to start creating social enterprise ventures with continued help from Locality.

#### **Kennet & Avon Canal (West)**

We regularly observe approximately 150 boats without home moorings between Bath and Devizes who do not comply with our mooring guidance.

Our framework plan issued in August has the following aims:

- a. To protect the amenity of the waterway for widest public benefit
- b. To improve access to popular visitor moorings by boats being used for leisure and holiday purposes, and to stretches of 'unmoored' water by anglers
- c. To provide a means by which boaters without a home mooring currently resident between Bath and Devizes may continue with their chosen lifestyle without the need to move every 14 days.
- d. To clarify local rules and achieve understanding and compliance through effective, positive, communications and support, reducing dependence on requirement for exercise of legal enforcement powers.

Key elements within the plan are:

1. Designate visitor mooring stretches; sign them clearly at start and end points; specify 'return rules' in the form of max. x days within any calendar month.
2. Extended stay charges for breaching time limits at visitor moorings. Sufficiently frequent sightings by professionally recruited paid staff to support this – warning notes c. 24 hours ahead of when extended stay charge kicks in.
3. New type of "Community" mooring permit for continuous cruisers who have been recorded by the Trust as being resident on the towpath in July 2012. Approx. 20 locations each accommodating up to c.10 boats to be designated where permit holders can stay for up to 28 days at a time before moving on to another one – or any other length of towpath providing they comply with the rules for that location.
  - i. Subject to an annual fee pegged to a percentage of the average rate for our directly managed sites in the area.
  - ii. Permit holders will be treated as having a home mooring and permits will be subject to all applicable terms of the mooring agreement for our directly managed moorings.





- iii. Eligible for a discount on winter mooring fee (i.e. where you can stay put for 5 months)
  - iv. Not assignable – only available to existing licence holders (not their boats) who have already established ‘residency’ in the area. Eventually, the number of ‘community’ berths will decline as people move away naturally.
4. Define neighbourhoods for boaters without home moorings and, using additional Trust resources, enforce continuous cruising rules (14 day limit) using existing processes
  5. Towpath presence – current enforcement processes apply but a community worker to be employed for a fixed term to help with communications and to support boaters to in resolving personal difficulties. (We are planning to support an extension the Waterways Chaplaincy and a temporary mooring warden for this purpose)
  6. Signage, maps and other information published in paper and electronically.

We have placed this framework plan on our extranet for the waterway partnership and navigation advisory group and have mailed it to national boating organisations and those involved in last year’s consultative process. IWA, RBOA and APCO had requested updates on progress prior to completion of the plan and we took those opportunities to share the detail before publishing. On the basis of these informal discussions, we believe that the approach, if we succeed in implementing it, will meet wide approval from traditional leisure boaters, the boating trade and many residential boaters.

Implementation detail, particularly the decisions on zoning different stretches for visitor/community/no-moorings, is the next significant challenge. The waterway partnership has agreed to develop advice for us on these and other detailed aspects for which good local knowledge and perspectives are essential. It appears that the partnership will require support in the form of a professional facilitator for this work and we are in the process of appointing a suitable contractor.

## 5. RESOURCING

We have committed £33k for the current year to consultancy and community capacity building for London, and a further sum (up to c.£5k) may need to be committed for completing the implementation plan for K&A moorings. These sums are within current budget provision.

Our Enterprise team will work with Workplace Matters to seek external funding for community support work for the K&A during the implementation phase for the new mooring plan once it is confirmed.

Once we are ready to implement, signage costs will be the major item of expenditure but the scale of cost is dependent on the number of locations which is not yet known. Assuming that the uptake of the Community Mooring permit proposal is in line with our predictions, income from permit sales should more than cover these and other setup costs.

We anticipate that local partnerships may identify other problem areas needing specific NCCC strategies. Where the geographical scope is quite limited, a simple approach of updating visitor mooring signage and implementing extended stay charges may be sufficient. Elsewhere, there may be need for approaches akin to our two existing project areas. We need to factor in this contingency into the 2013/4 business planning round.

We are not planning at this stage to cut the budget for legal fees associated with enforcement cases. Whilst we hope that the need for legal action will decline as the ‘softer’ initiatives outlined in this paper start to bear fruit, it is important to maintain the deterrent effect of legal enforcement.

## APPENDIX A: CHRONOLOGY OF CONSULTATION ACTIVITIES, 2002 - 2012

With the passing of the British Waterways Act of 1995, BW was empowered to refuse to licence a boat which did not have a home mooring – unless the boat was used ‘*bona fide for navigation*’, ‘not staying in the same place for more than 14 days’. In signing a licence application, the boater confirms a commitment to “*bona fide navigate*” if there is no home mooring. Growth in residential boating had already started at this time, and establishment of small groups of boats within a limited area in London, on the western K&A, southern GU and other suburban areas was becoming a feature of the local canal landscape.

In 2004, following public consultation, we introduced mooring guidance for continuous cruisers which set out BW’s interpretation of the legislation to help those without home moorings to comply with the Act.

The absence within the statute of clear definitions of ‘*bona fide navigate*’ and ‘*place*’ contributed to growth in non-compliant continuous cruising (NCCC) , as did growing evidence of a shortage of long term mooring provision. As a possible means of stemming growth in NCCC, consideration was given in 2002/3, in 2005/6 and again in 2007 (by BWAf) to modifying the licence fee structure so that those without a home mooring would pay significantly more for their boat licence. No national boating organisation supported this approach in the associated public consultations and the plan was dropped.

The shortage of affordable housing in the South East is a major driver to accelerating demand for boats for residential use, and people buy boats to live on without securing a home mooring because they know they can (usually) ‘get away with it’. We recognise the need for increased provision of long term residential moorings, and a [statement by the housing minister](#) in August 2011 was helpful in encouraging local planning authorities to take a more supportive stance, confirming that the New Homes Bonus is payable in respect of residential moorings. The property director is leading a project to create new residential moorings in London.

We last consulted on this subject during 2009 and in 2010 updated our [national moorings policies](#) as a result. We then attempted to implement new moorings control processes as outlined in the policy through development of local mooring strategies for the western end of the K&A and the River Lee.

For the former, we established a steering group representing all types of local boater and parish councils. After nearly a year of discussions, there was little consensus, but we took useful outputs from their work and have recently published our framework plan on which Trustees were briefed during their July meeting.

In February 2011, in an endeavour to fast track progress in London, we presented for public consultation a tentative mooring plan which defined movement requirements for continuous cruisers in the Lee Valley. This triggered vociferous opposition by unaffiliated residential boaters living along the towpath and an effective PR campaign against our proposals. We shelved the proposals in August 2011 in favour of a strategy of engagement with boaters concerned with the aim of establishing a more effective social enterprise model for creating a happier environment for all on London’s waterways. This is a long standing issue, but the leisure boating community, the boating trade and some land based communities are increasingly concerned about the impact on their enjoyment of boating of increasing number of residential boats tying up for long periods along the towpath in the same place in some areas of our network. There is an increasing polarisation of views and the creation of the Trust has raised expectations that policy will be developed to progress this issue.

## APPENDIX B: LEGAL BACKGROUND – MORE CONTEXT

Section 17(3)(c) British Waterways Act 1995 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.

The language of the Act is generic and, as with all statutes, requires interpretation. We therefore developed guidance for customers based on professional legal advice, including from Leading Counsel, which we believe reflects the correct legal interpretation of the Statute. The Guidelines updated in 2008 were considered in the Bristol County Court in 2010 in the case of British Waterways v Davies. The Judge expressly found that Mr Davies’ movement of his vessel every 14 days (whilst remaining on the same approximate 10 mile stretch of canal between Bath and Bradford on Avon) was not bona fide use of the vessel for navigation. We updated the guidelines in 2011 to reflect this judgement.

In summary, the guidance says:

1. the boat must genuinely be used for navigation throughout the period of the licence.
2. 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);
3. it is the responsibility of the boater to satisfy the Trust that the above requirements are and will continue to be met.

It provides definitions as follows:

“**Navigation**” means travelling on water involving movement in passage or transit. We put reliance on the meaning given to the word in the case of Crown Estate Commissioners v Fairlie Yacht Slip Limited. Whilst a decision of the Scottish courts, the English courts can, and have, taken the views of the Scottish Judge into account. In that case the basic concept and essential notion of the word “navigation” was said to be “passage or transit”, the underlying concept being one of movement.

“**Place**” means a neighbourhood or locality, NOT simply a particular mooring site or position. The Shorter Oxford Dictionary gives some 8 separate principal meanings for the noun ‘place’. Therefore the rules of legal interpretation require the meaning that most appropriately fits the context to be used. Since ‘navigation’ means travelling by water and ‘travel’ means a journey of some distance, the word ‘place’ in this context is used by the Act to mean an “area inhabited or frequented by people, as a city, town, a village etc” (meaning 4b in the Shorter Oxford Dictionary).

And the guidance which follows from the above is:

- to remain in the same neighbourhood for more than 14 days is not permitted. The necessary movement from one neighbourhood to another can be done in one step or by short gradual steps. What the law requires is that, if 14 days ago the boat was in neighbourhood A, by day 15 it must be in neighbourhood B. Thereafter, the next movement must normally be to neighbourhood C, and not back to neighbourhood A (with obvious exceptions such as reaching the end of a terminal waterway or reversing the direction of travel in the course of a genuine cruise).



- What constitutes a 'neighbourhood' will vary from area to area – on a rural waterway a village or hamlet may be a neighbourhood and on an urban waterway a suburb or district within a town or city may be a neighbourhood. A sensible and pragmatic judgement needs to be made.
- It is not possible (nor appropriate) to specify distances that need to be travelled, since in densely populated areas different neighbourhoods will adjoin each other and in sparsely populated areas they may be far apart (in which case uninhabited areas between neighbourhoods will in themselves usually be a locality and also a "place").
- Exact precision is not required or expected – what is required is that the boat is used for a genuine cruise.
- Circumstances where it is reasonable to stay in one neighbourhood or locality for longer than 14 days are where further movement is prevented by causes outside the reasonable control of the boater. Examples include temporary mechanical breakdown preventing cruising until repairs are complete, emergency navigation stoppage, impassable ice or serious illness (for which medical evidence may be required) Such reasons should be made known immediately to local Trust enforcement staff with a request to authorise a longer stay at the mooring site or nearby. The circumstances will be reviewed regularly and reasonable steps (where possible) must be taken to remedy the cause of the longer stay – eg repairs put in hand where breakdown is the cause. Where difficulties persist and the boater is unable to continue the cruise, the Trust reserves the right to charge mooring fees and to require the boat to be moved away from popular temporary or visitor moorings until the cruise can recommence. Unacceptable reasons for staying longer than 14 days in a neighbourhood or locality are a need to stay within commuting distance of a place of work or of study (e.g. a school or college).
- The law requires the boater to satisfy us that the bona fide navigation requirement is and will be met. It is not for the Trust to prove that the requirement has not been met. This is best done by keeping a cruising log, though this is not a compulsory requirement. If however, we gain a clear impression from our regular boat sightings that there has been limited movement insufficient to meet the legal requirements, we can ask for more information to be satisfied in accordance with the law. Failure or inability to provide that information may result in further action being taken, but only after fair warning.
- Failure then to meet the movement requirements, or to provide evidence of sufficient movement when requested, can be treated as a failure to comply with s.17 of the 1995 Act. After fair warning the boat licence may then be terminated (or renewal refused). Unlicensed boats must be removed from CRT waters, failing which the Trust has power to remove them at the owners cost.
- In any case where the boat is the licence holder's primary residence, we seek a court order before exercising these powers. This provides the judge with the opportunity to consider the proportionality of the sanction in the context of the Human Rights Act. In the small number of cases that have completed the full course of our enforcement processes and reached the law courts, judges have always upheld our case.



## APPENDIX C: THE ENFORCEMENT PROCESS

For the control of both licencing and mooring, all boats are monitored every 2-4 weeks regardless of their mooring status. 'Data checkers' walk each stretch of towpath at least twice monthly. A 'sighting' is recorded using GIS enabled hand-held devices – the boat's index number, date and location is recorded.

Sightings of boats without a home mooring are analysed regularly to build up a picture of their movements over time. In locations where the same boats are sighted repeatedly and consistently in the same place, more frequent visits will be made to help us form a view of whether the guidance for boats without a home mooring appear to be being breached

Where a boat is left on inland waters owned or managed by the Trust without lawful authority, we have statutory powers to remove it. If the boat is sunk, stranded or abandoned on our waterways, a statutory notice can be served under Section 8 of the British Waterways Act 1983 permitting us to remove the boat after a minimum of 28 days' notice. We can also serve notice under Section 13 of the British Waterways Act 1971 to remove a houseboat that is moored unlawfully or without a valid licence after a minimum of 28 days notice. The procedure that is followed in each case will depend on whether the boat is occupied ("liveaboard") or not:

**Liveaboard Procedure** Our policy is to serve a series of letters on the owner/occupier warning them of the consequences of failure to remove the boat. This correspondence takes several months and gives the owner/occupier ample opportunity to remedy matters and discuss any queries with the Trust. If, despite the opportunities afforded, the boat remains on Trust waters without lawful authority, we will serve statutory notices under Sections 8 and 13 (see above).

Upon expiry of the minimum 28 day notice period the Trust will notify the owner/occupier that the file is being transferred to solicitors to issue Court proceedings. Court proceedings are then issued for declaratory and injunctive relief and are served on the owner/occupier. The owner/occupier has then an opportunity to defend the case and have a fair trial on the merits. The Court can then review the procedure followed and determine the scope (if any) of the relief granted to us.

In most cases however, once the enforcement procedure commences the owner or occupier of the boat removes it from the water, obtains a mooring or starts to follow the mooring guidance before we reach the stage of issuing legal proceedings. Cases are generally labour intensive

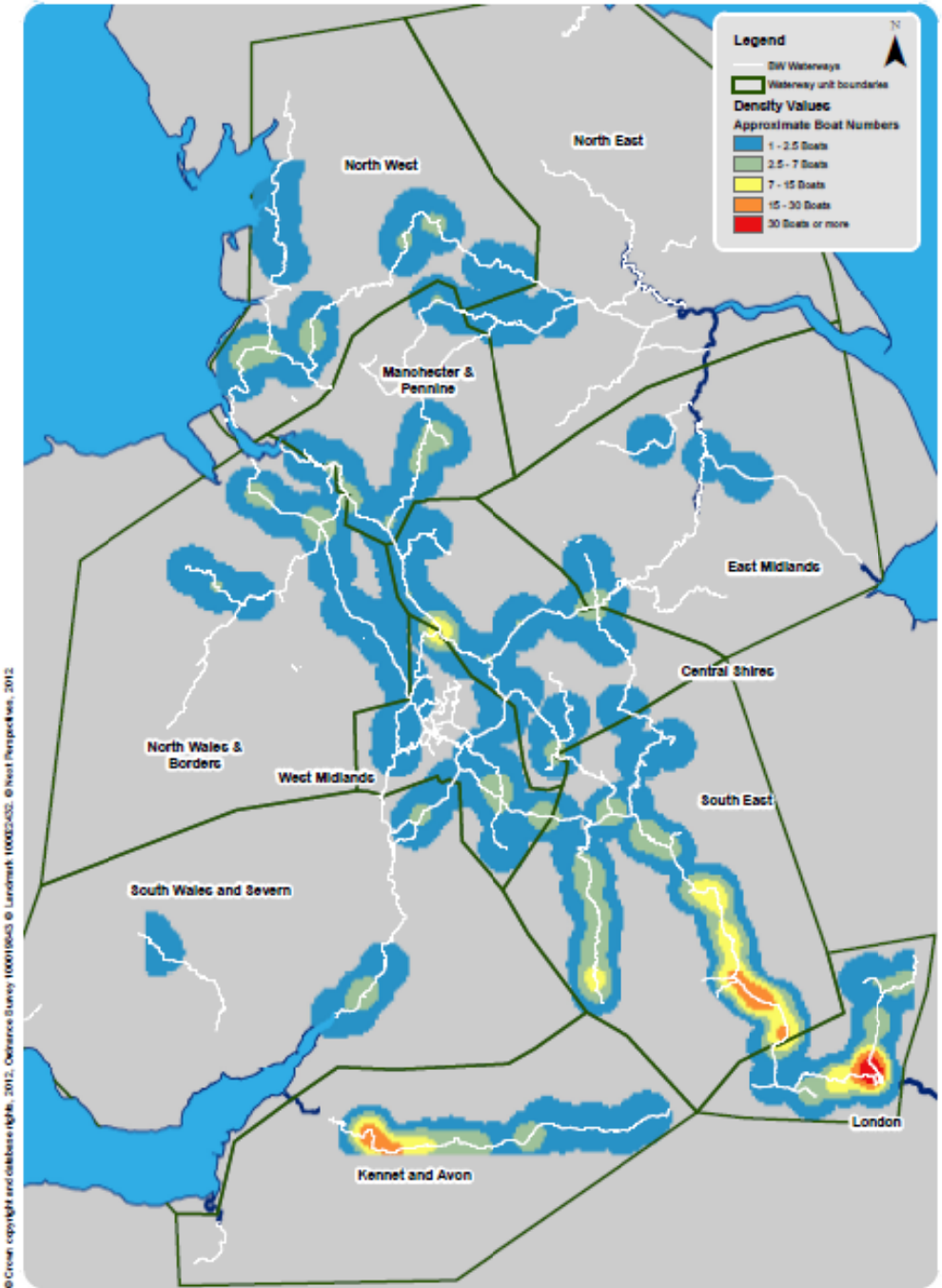
**Non-liveaboards** Where a boat is sunk, abandoned or otherwise not occupied, the Trust will serve a notice under Section 8 requiring removal from its waters within 28 days. If the notice is not complied with we can remove the boat from its waters without issuing Court proceedings. Both of these procedures are human rights compliant.

The overwhelming majority of continuous cruiser enforcement cases which we open are resolved or closed without reaching court. We have sent a total of 19 cases to our solicitors since March 2009. Of these:

- 4 settled in court in our favour
- 4 awaiting hearing date
- 5 resolved without going to court
- 6 remain in process
- The average costs incurred for the 11 cases closed and billed up to July 2011 is approximately £8,100



APPENDIX D: HOTSPOT MAP OF PRIORITY NCCCs



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Approximate average daily densities of continuous cruisers which appear to have moved less than 5km between November 2011 and April 2012 (all are subject to enforcement monitoring)

## **COUNCIL MEETING – 27 SEPTEMBER 2012**

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### **Briefing Paper – Health and Safety**

This paper and the associated presentation looks at the broad scope of Canal and River Trust's responsibilities regarding the health and safety of its visitors, employees, volunteers and contractors. The Trust's approach is to do what is right and appropriate and not just to take action because it is required by legislation.

#### **1. Public Safety**

##### **1.1 Assessing the risks**

Looking firstly at the health and safety of our visitors, this is undoubtedly the area where we have least management control. The reality of managing risk where there is open public access to the network, 24 hours a day, 7 days a week is daunting. People can and do engage in almost any activity they choose to. The Trust's policy of encouraging the widest possible access means we focus on having assets that are inherently safe through their design and operation and the remaining risks are obvious allowing visitors to manage their exposure to them. We have to inevitably balance this with our aim of minimum intervention on an historic 200 year old network. There is a careful balance to be struck between preserving the heritage and achieving legally acceptable safety standards.

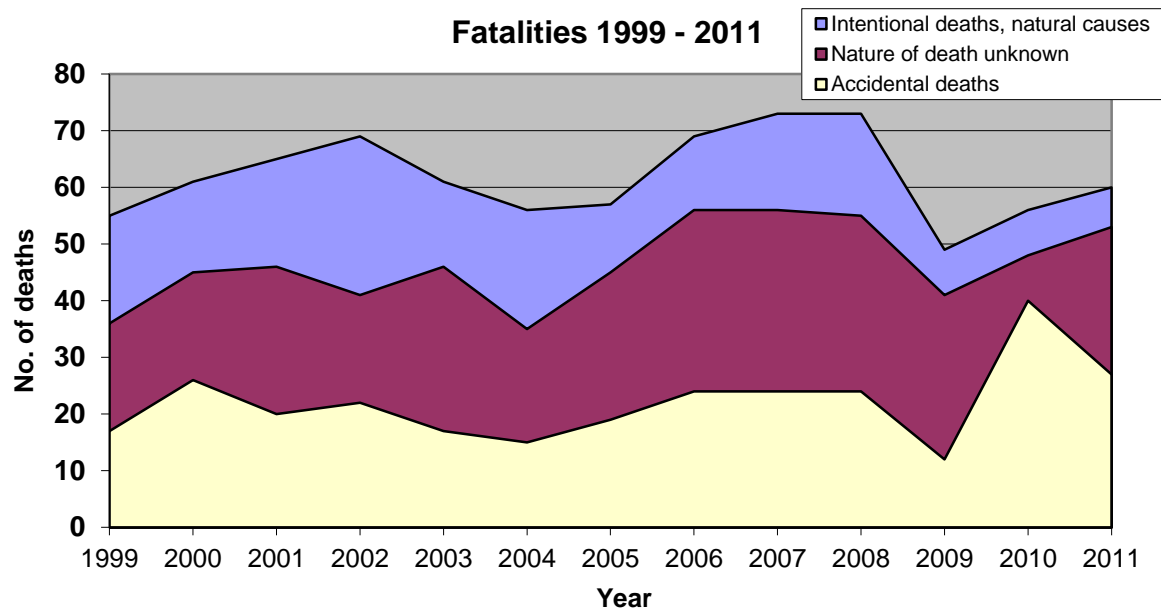
To improve our management of the risks faced by the public we introduced Minimum Safety Standards in 2008. These built on existing waterway standards but included a more rigorous monitoring of implementation. The 47 safety standards cover navigation and structure operability as well as access and towpaths.

The entire 2000 miles of the network have had a risk assessment which was conducted between 2006 and 2011. This assessment looked at all parts of the network and considered the activities taking place at that location and the surrounding environment. As a rule of thumb, moving structures such as lock and bridges coupled with an urban environment present the greatest risks. A range of remedial actions have been identified by this process and there is a 5-10 year review of the risk assessments. These reviews look at any changed circumstances such as residential development in the area and significant incidents trigger an immediate review.

The ongoing condition of the assets is monitored through our inspection processes principally on a monthly frequency by the "Length Inspection". The Length Inspection is looking for deterioration and from a public safety perspective identifies damaged and missing safety equipment or problems with the towpath and vegetation.

Length Inspections are supplemented by an annual inspection involving engineers and tree specialists for example who monitor network condition in a more detailed way. Locks, bridges, embankments and reservoirs are subjected to extensive principal inspection on a 5-20 year cycle by specialist engineers. Clearly asset integrity plays a major part in preventing major accidents such as breaches with the potential for loss of life and extensive property damage. These aspects of safety and risk are dealt with by our engineering colleagues.

## 1.2 Managing risks to the public



Water related fatalities average around the mid 60's per year. City centres account for 30 % of the fatalities reported with young males and the early hours of the morning being noticeable factors. Canal and River Trust works closely with local authorities and the police to address the factors influencing these incidents.

The past couple of years have seen a number of very serious incidents involving the public and in particular children. I have in mind the tragedies at Stourport and Swinton in South Yorkshire and this year Northampton and Saltford on the K&A. Despite widespread calls for fencing and other measures the Trust has argued against taking action which has little effect and potentially great cost. Where the Trust's incident investigation has identified a particular measure, which by our own standards is accepted practice, we have taken appropriate action to reduce the risk.

Since 2006 Canal and River Trust set a target of reducing the long term trend of public loss and injury incidents related to infrastructure defects from 17.5% to 10%. The focus on minimum safety standards has enabled us to achieve our goal with our target met in March 2010 and maintained over the past 2 years. In 2011/12 there were 287 reported incidents of injury or loss. After investigation it was concluded that in 27, or 9.4% of cases, a problem with our infrastructure was a significant contributory factor. Examples include defects in locks damaging boats and holes in the towpath injuring pedestrians and cyclists. We do analysis quarterly on these incidents.



### 1.3 The cost of injuries and losses

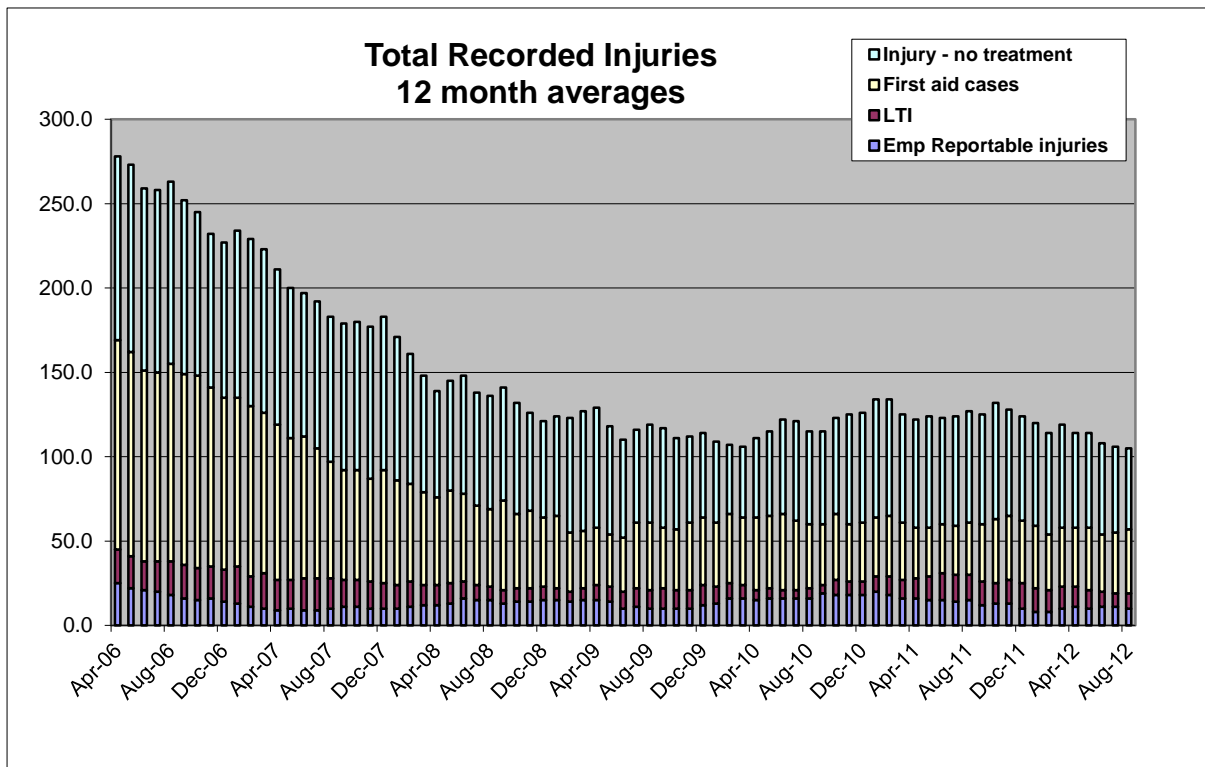
The number of injury and property loss claims has remained generally consistent over the past 12 years but the Trust has improved its success at repudiating the claims. Peaks in costs awarded tend to be driven by a small number of particularly serious incidents.

In the 10 years between 2001 and the end of 2010 there were 1230 claims for loss or injury, of which 560 were repudiated and have cost £7.5m with £2m potential liabilities. (a more detailed breakdown is in the presentation)

## 2. Employee, Volunteer and Contractor Safety

### 2.1 Employees

Between 2006 and 2010 the Trust's employee safety performance improved year on year across all severities of injury. Between 2010 and mid 2011 our performance had plateaued. In 2011 we reinvigorated our safe behaviour programme with the support of the Trades Unions and Safety Representatives. Recent results in 2012 are showing very encouraging signs that we have succeeded in re-establishing a downward trend in all injury incidents.



In addition to focusing on safe behaviour we have also particular emphasis on safety audits of workplaces by managers with specific targets set each year. We believe that the active engagement of managers and the workforce in a safety partnership is key. Many of the frontline employees work in small groups with less supervision than is typical in other industries. With reduced opportunity for direct supervision we are particularly dependant on

good planning, competent workers and safe behaviour to deliver a safe and healthy workplace.

We have a wide range of safety metrics, the most important are our tracking of leading and lagging performance indicators and injury frequency. These measures are reflected in performance scores for the business.

Occupational health issues centre on historic exposure to vibration with 11 cases of Hand Arm Vibration Syndrome diagnosed over the past 5 years. Only one case non-fatal case of Weil's disease has been diagnosed over the same period.

## **2.2 Volunteers**

We see volunteers who work directly for the Trust as "quasi" employees for all aspects of health and safety with a programme of training and competence development similar to that of full time employees. We also work with volunteer organisation to enable them to undertake activities on Trust property with minimal supervision. So far 30 organisations have achieved "self-supervising" status which frees up significant resources in the Trust for additional volunteer activities. Our volunteer safety record is very good with only 7 injuries in 38,000 days worked in 2011/12 this gives an injury frequency per 100,000 hrs worked of 2.6 compared to 4.3 for CRT employees.

## **2.3 Contractors**

Following 2 tragic incidents in 2004 when 3 contractors died working for British Waterways our control and management of contractors has tightened substantially. The incidents involved a father and son who were carrying out hedge cutting from a tractor and a diver who was installing a temporary dam.

We now use far fewer small contractors in favour of larger national contracts and those contractors we do employ have to meet stringent on-site performance which is assessed by Achilles Verify a national contractor assessment organisation. The Trust now has a number of specialist contract managers to ensure we get a good quality and safe service from our contractors. In the past 4 years we have had 4 reportable injuries to contractors. Our current national contractor's H&S performance compares favourably to the Trust's own performance.

## **3 Other key safety activities**

The Trust operates 3 ports; Docklands in London, Sharpness on the River Severn and Howdendyke on the Yorkshire Ouse. Sharpness and Howdendyke handle general cargo in ships up to 5000 tonnes. Docklands hosted a 22000 tonne cruise ship during the Olympics.

With regards to boat safety the Trust jointly runs the Boat Safety Scheme with the Environment Agency. The scheme is a 4 yearly MOT equivalent for boats looking primarily at fire, explosion and pollution prevention. Inspections are done by self-employed Boat Safety Examiners



Canal &  
River Trust

Keeping people, nature & history connected

The Trust also organises a “Fitness for Purpose” inspection scheme for large freight carrying vessels on our waterways using commercial ship surveying organisations.

We have representation at a senior level on important national public and workplace safety organisations. Examples include:

The National Water Safety Forum

The Visitor Safety in the Countryside Group

IOSH Rural Industries Group

**Tony Stammers**

**Head of Health & Safety**



# MEMORANDUM TO THE COUNCIL

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## Update on Governance Issues

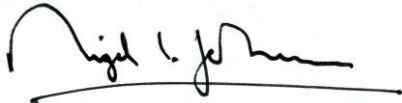
### Report by the Secretary

#### 1. RULES

- 1.1 The 'Rules' are the second tier of constitutional documentation for the Trust, after the Articles of Association. Provision for them is made by Article 11 (the Articles are available on the Trust's website at < <http://canalrivertrust.org.uk/publication-scheme/legal-and-governance/legal-documents> >.
- 1.2 The intention of the Rules is that they contain those constitutional provisions that are expected to change or be updated on a more frequent basis (every few years) than the Articles and therefore require more flexibility and less formality in their making and revision.
- 1.3 Article 11 provides that any Rules (and any amendment or alteration of them) shall be made by ordinary resolution of the Council but only on recommendation of the Trustees. The Article further provides that the first Rules to be adopted shall not take effect until they are approved in writing by the Secretary of State.
- 1.4 The process for adoption is therefore somewhat convoluted on this first occasion. Officials at Defra have requested sight of the draft Rules before adoption on which to comment in order to avoid the potential embarrassing situation of the Secretary of State seeking changes after the Council has adopted them.
- 1.5 Equally it is considered proper that the Council should have an opportunity to see the draft Rules and provide feedback in advance of them being shared in draft with Defra.
- 1.6 Accordingly the draft Rules are attached for feedback. If time permits, brief feedback may be taken at the forthcoming meeting but it is suggested that any detailed feedback be provided subsequently in writing or by contacting myself direct by telephone (details at end of this report).
- 1.7 Feedback is requested to be provided by the end of October and will be collated into report to the Trustees when they consider the draft Rules at its November meeting. Thereafter the draft Rules (updated as necessary) will be shared with Defra with a view to seeking the Secretary of State's agreement to them in advance of formal adoption at the March 2013 meeting of the Council.
- 1.8 As has already been notified, three candidates came forward from the Council to serve on the Appointments Committee and no election is therefore required. As the role of the Appointments Committee is already prescribed by Article 27 of the Articles of Association that body can begin its business notwithstanding that the Rules will not be formally adopted until March next year. The first business of the Appointments Committee is to select and appoint up to three co-opted members of the Council pursuant to Article 27.2.3.

## 2. GOVERNANCE HANDBOOK

This document is intended to be an explanatory and reference source that collates and consolidates the various governance provisions of the Trust and its structures, both formal and informal. It is to be a working document (primarily in electronic form) and does not require formal adoption. Indeed it is expect to evolve over time. A first version will be tabled in hard copy form at the forthcoming meeting and again comment and feedback is invited. An electronic version of the Governance Handbook will be published on the Trust's website and extranet.

A handwritten signature in black ink, appearing to read 'Nigel Johnson', with a horizontal line underneath it.

**NIGEL JOHNSON**

Company Secretary  
20 September 2012

nigel.johnson@canalrivertrust.org.uk  
07879 421492