

My address

date

Martin Skinner
Enforcement Officer
British Waterways
The Dock Office
Commercial Rd
GLOUCESTER GL1 2EB

Dear Mr Skinner,

I write in reply to your letter of 11 August about narrowboat XXXX (registration numberXXXXX).

It may be my responsibility to satisfy British Waterways (BW) that boat XXXX has been 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, although my comments below qualify this obligation. However BW has not notified me that it is not satisfied that this is the case. BW has not informed me that XXXX has remained continuously in any one place for more than 14 days, and nor has it informed me that XXXX has not been used bona fide for navigation.

Following XXXX, Russell Bennett informed me in telephone conversations on X date and X date that XXXX was permitted to remain in Bath during XXXX unexpected circumstances as Mr Bennett agreed on behalf of BW was reasonable in the circumstances.

I therefore argue that BW is satisfied that the movements of XXXX comply with Section 17 (3) (c) of the British Waterways Act 1995 (the 1995 Act).

The issue raised by BW of a progressive journey is not a requirement specified in the 1995 Act, nor is it a requirement specified in Condition 2 of the General Terms and Conditions for Boat Licences. The term “progressive journey” only occurs in the Mooring Guidance for Continuous Cruisers, which states that it is guidance, that it is an interpretation of the law, and “does not have the force of law” (Note 1). It may be the view of BW that XXXX is not making a progressive journey, but since this is outside the scope of the 1995 Act and of Condition 2 of the General Terms and Conditions for Boat Licences, it is not relevant in deciding whether XXXX’s movements comply with the 1995 Act.

BW lacks the power to define words in Section 17 of the 1995 Act and cannot modify the terms of the 1995 Act by providing interpretive guidance. In limiting discretion, fixing stringent requirements such as the necessity for XXXX to move beyond the area between Bath and Hilperton, and in interpreting primary legislation, the Mooring Guidance for Continuous Cruisers is ultra vires in relation to the 1995 Act.

Whilst it may be my responsibility to satisfy BW that the requirements set out in the 1995 Act are met, Section 17 (4) of the 1995 Act gives 28 days as a minimum period within which the master of a boat must remedy any default. Further, BW is required by virtue of Article 6 of the European Convention on Human Rights (ECHR) to engage in due process (in this instance including a period of 28 days to permit remedy to be executed) before taking action.

It follows that BW’s claim that BW will terminate my licence within 14 days if I do not send evidence of XXXX’s movements is clearly violating Section 17 (4) of the 1995 Act and Article 6 of the ECHR. As such

any subsequent step taken by BW would clearly also be unlawful. In addition I note that this also applies to the threat made to me by Mr Skinner to terminate my licence immediately. I therefore require BW to provide me with evidence of authority to act in this manner. Please treat this as a request under the Freedom of Information Act 2000.

I also wish to state that I have been confronted by threats to my home by BW which I find distressing in the extreme.

Since BW has not informed me that XXXX has remained continuously in any one place for more than 14 days, or that XXXX has not been used bona fide for navigation, there is no legal requirement for me to provide evidence of XXXX's movements. I re-iterate that XXXX's movements comply with Section 17 (3) (c) of the 1995 Act. If BW acts illegally in terminating my licence and subsequently removing XXXX and disposing of my property under Section 8 of the British Waterways Act 1983 (the 1983 Act) I shall take action against BW pursuant to Article 1 Protocol 1 of the ECHR (right of respect for property).

I also argue that BW would not be acting lawfully in the termination of my licence while my complaint is pending. It follows that should BW do so that BW will have bought to effect a violation of Article 6 of the ECHR. If my complaint to BW is unsuccessful I shall seek Judicial Review of that decision. I also draw your attention to the general public administrative law duty applying to all public bodies including British Waterways to exercise any power reasonably in all circumstances.

I enclose evidence covering the period from January 2009 demonstrating that XXXX has not remained continuously in any one place for more than 14 days except as was reasonable in the exceptional circumstances stated above. Given the duty of BW to uphold my rights under Article 8 of the ECHR I believe that I am under no lawful obligation to provide this evidence.

XXXX is not a houseboat and therefore Section 13 of the BW Act 1971 (the 1971 Act) does not apply. A houseboat licence is not in force in relation to XXXX which is licensed instead as a pleasure boat. I also wish to state that I am a member of the National Association of Boat Owners.

Given that XXXX is my home Article 8 of the ECHR applies. Following the engagement of my rights under Article 6 of the ECHR it is for BW to demonstrate that XXXX's movements do not comply with Section 17 (3) (c) of the 1995 Act. If BW considers that they do not, I require BW to uphold my rights under Articles 8 and 6 of the ECHR respectively. In particular I specifically require BW not to harass me in relation to my home and not to assume that XXXX's movements do not comply with Section 17 (3) (c) of the 1995 Act unless it can demonstrate with evidence that they do not.

Further I argue that should BW not uphold my rights under Articles 8 and 6 of the ECHR then under the appropriate conditions of Judicial Review I will seek a Declaration of Incompatibility of Section 17 (3) (c) of the British Waterways Act 1995 with Articles 8 and 6 of the Convention and subsequently make application to the European Court of Human Rights to seek enforcement of my Convention rights. I draw the attention of BW to the authority provided by *Connors v United Kingdom* 2004 ECHR 66746 01 and also to the adjudication of the Department for Communities and Local Government that Bargee Travellers are covered by Section 244 of the Housing Act 2004 and thus that Article 8 of the ECHR is in turn engaged.

Should BW not cease and desist in harassment of me (specifically violating my rights under Article 8 of the ECHR) I give notice to BW as follows.

- 1 To serve on BW a Letter Before Claim in accordance with the Pre-action Protocol to the Civil Procedure Rules Part 54;

- 2 To make a complaint to the Police of the intent of BW to harass and unlawfully evict me without due process (noting that to seek to embark on either of these activities is a criminal offence); and
- 3 To seek appropriate interlocutory relief.

For the avoidance of doubt I require BW to confirm to me in writing within 14 days of the date of this letter that it will uphold my rights under Articles 8 and 6 of the ECHR. Should BW not provide such an assurance then I shall deem that BW has violated my Convention rights and I intend to defend any action taken by BW against me as stated above on the most vigorous of terms.

Yours sincerely

Harassed boater

CC
XXX Solicitors
XXX MP
Lord Avebury
NABO
Friends, Families and Travellers
National Barge Traveller Association
Continuous Cruisers' Action Group
Residential Boat Owners' Association