

## APPENDIX TO CWF MESSAGE POSTED BY PETER MACDONALD ABOUT MEETING BETWEEN CONTINUOUS CRUISERS AND CRT, 28/11/12

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[Policy briefing paper](#) endorsed by CRT Council and Trustees September 2012

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### 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](http://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 briefing paper](#) which Trustees and the Council endorsed at the end of September 2012<sup>1</sup>. (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](mailto:damian.kemp@canalrivertrust.org.uk) using 'towpath mooring' in the subject line.

Sally Ash  
Head of Boating, Nov 2012

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### **"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.

### **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.

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<sup>1</sup> 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.)

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.

### **“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)<sup>2</sup> 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.

### **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.

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<sup>2</sup> 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.”

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 offshore 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.



Canal &  
River Trust

## **Briefing Paper – NON COMPLIANT CONTINUOUS CRUISING**

**This paper was discussed by both Council and Trustees at their September 2012 meetings. It forms the basis of our policy on this subject.**

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### **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.

The problem we face is in enforcing our interpretation of this widely drawn legislation, when the only

### 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.

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 Fol) and providing support to boaters who are within our enforcement process for failing to demonstrate compliance with mooring guidance.

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.

## 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.

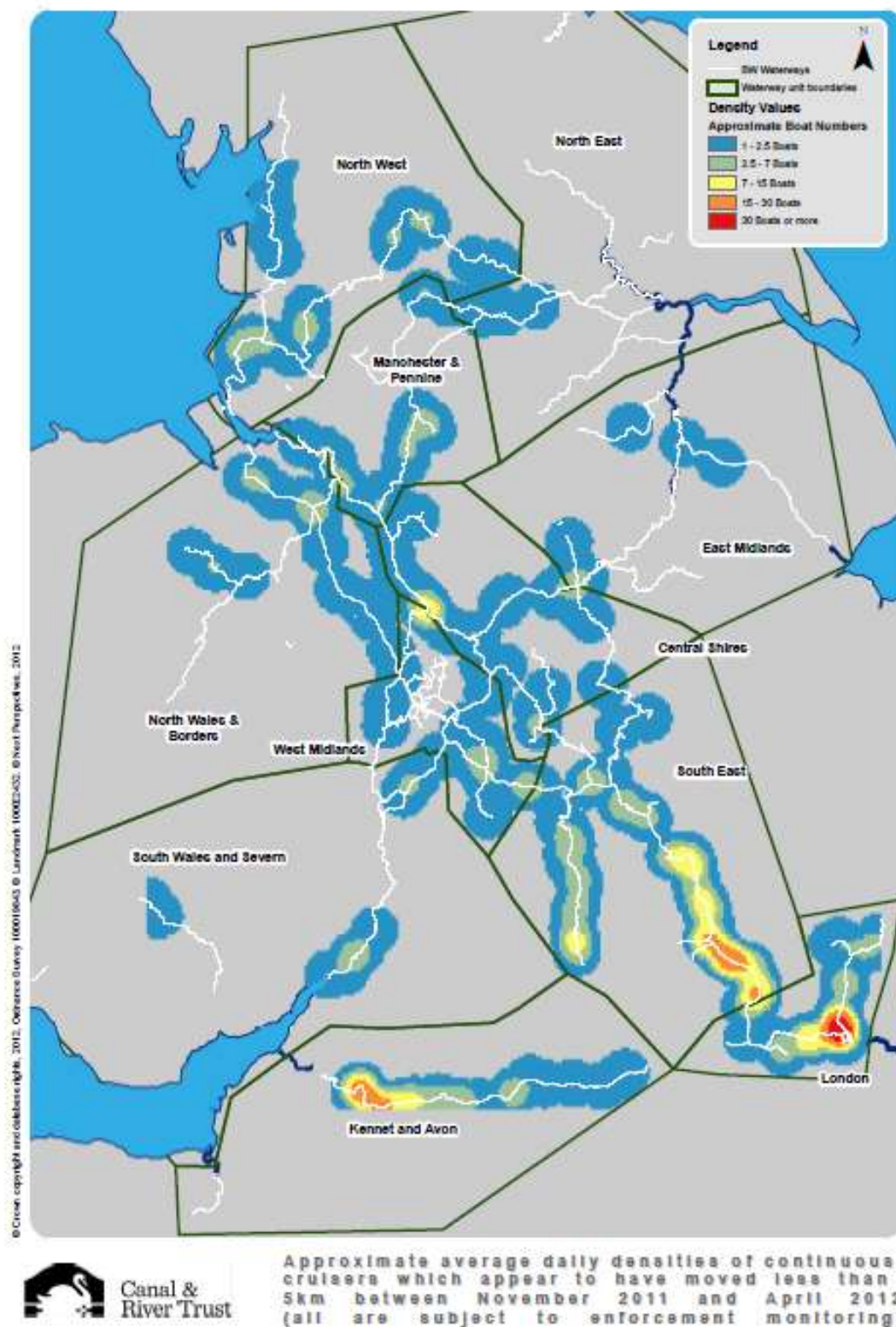
In most cases however, once the enforcement procedure commences the owner or occupier of the boat removes it from the water, obtains a mooring or starts to follow the mooring guidance before we reach the stage of issuing legal proceedings. Cases are generally labour intensive

**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:

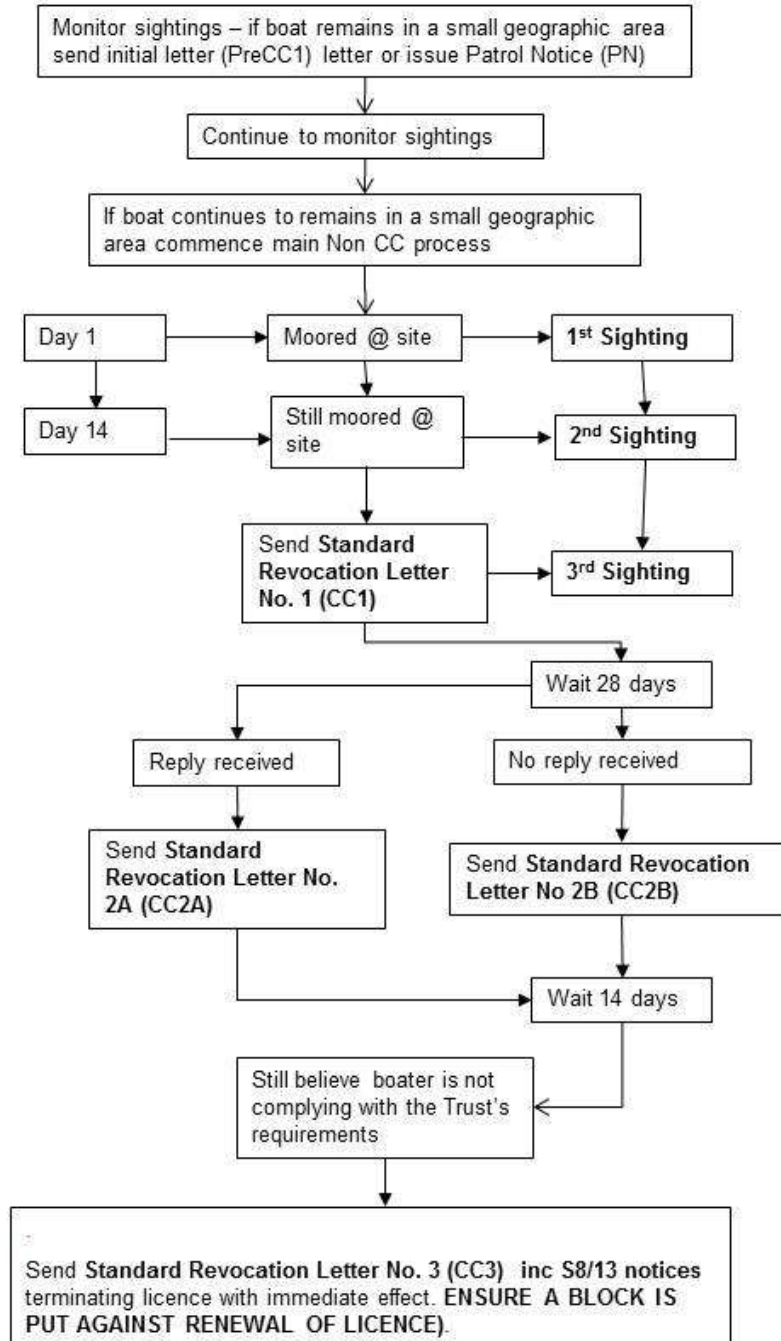
- 4 settled in court in our favour
- 4 awaiting hearing date
- 5 resolved without going to court
- 6 remain in process
- The average costs incurred for the 11 cases closed and billed up to July 2011 is approximately £8,100

## APPENDIX D: HOTSPOT MAP OF PRIORITY NCCCs



## CONTINUOUS CRUISERS TIMELINE & SIGHTINGS

The law requires the boater to satisfy the Trust that the continuous cruising requirements are met. Since the boater is not allowed to stay in any one place for more than 14 days (or such longer period as is reasonable in the circumstances), the following sightings and timeline should be used:-



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**“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: