



Comments on GDPR issues for boat licensing

Summary

In September 2020, The Canal and River Trust (the Trust) launched a consultation into proposed changes to the 'private boat licensing terms and conditions' document.

NABO has submitted its response, in which we make reference to our concerns over the Trust's approach to GDPR in its licensing documentation.

As part of its consideration of the proposals, NABO decided to undertake a review of the privacy documents that form part of the private licence relationship.

As a result of this, we now write to share our findings and express our concerns. We are not content: we find shortcomings that are a mix of bad presentation, hard to read wording, lack of clarity and non-compliance with GDPR. Lack of clarity is in itself a non-compliance.

The documents reviewed by NABO

There are a number of relevant CRT documents and web pages for licensing:

- CRT web page for licensing. <https://canalrivertrust.org.uk/enjoy-the-waterways/boating/buy-your-boat-licence>.
- Boat licence application form, dated May 2018 (**Application Form**) 1194.pdf
- General Terms and Conditions for Boat Licences, dated February 2020 (**Terms**): 5962.pdf
- Privacy Policy, dated September 2020 (**Policy**) <https://canalrivertrust.org.uk/cookie-and-privacy-policy>.
- Privacy Schedule for Customers undated. (**Schedule**) 42407-privacy-schedule-for-customers.pdf
- Equality Questionnaire (**Equality form**): 35483-equality-questionnaire.pdf
- CRT's proposed changes to the Terms: (**Terms changes**) 42500_your-boat-licence-terms-and-conditions.pdf

It is immediately apparent that the documents have been written at different times, and by authors with different skills. As a result, the package does not interconnect and important links are not made.

The documents are not all identified and dated. It is apparent that the Trust has in the past made changes to the documents without reference to ongoing licence periods. Because previous versions are not available, users cannot see what was agreed at the time of purchase of their licence. This undermines the licence relationship.

We find that it is possible to buy a private boat licence without being aware of, or making explicit agreement to, the two Privacy Policy documents. These are the 'Privacy Policy' and the 'Privacy Schedule for Customers'. Neither of these is mentioned on the licensing web pages or in the application form. Only the Privacy Policy is referenced under the 'Terms' document at point 7.11. in the context of insurance. Privacy applies to all data items and not just Insurance.

The Trust operates licensing under the consent of 'Public Task'. NABO notes that this is not a blanket cover that enables the Trust to process data without justification. We expect that all aspects of the processing must be demonstrated to be 'necessary' and clearly explained for the purpose of boat licensing. We conclude that this is not in place and a lawful basis does not exist.

It is NABO's view that the Trust's documents do not provide the necessary justification and explanation of the 'necessary' data processing.

It is clear that the Trust has asked for data that is not related to licensing. In the Schedule there is a long list of data types, including items not related to licensing. Data processing for licensing is stated under only one consent, that of 'Public Task'. No consent is specified for data that is not necessary for the 'Public Task'. By way of example, in the Licence Application form, the Trust asks for agreement to "*share your details with our subsidiaries and other affiliated companies*". No justification is offered as to why this is 'necessary' for the Public Task. In NABO's view this is not part of the 'Public Task'. This requires other 'consent' to be identified.

There are a number of items in the Privacy documents that are unclear and lack a clear explanation of how they apply specifically to licensing. This, in NABO's view, is not a satisfactory justification for 'Public Task'. In our view, if it is not clear to users it is not satisfactory.

The information on privacy issues for the Equality Act is divided across documents. Applicants cannot readily find all the information. There is no place for specific consent to data processing, which is required by GDPR. It cannot be presumed.

We are not content with the language used in the Privacy documents. We have written more generally and separately to the Trust on this matter. Only by way of example, we draw your attention to the last bullet point of the 'Privacy Schedule for Customers'. This comprises a sentence of 77 words. It is self-evident that this is not an appropriate wording. There are many other long sentences in the documents. We observe that Privacy Laws require that the information provided to people must be concise, transparent, intelligible, easily accessible, and it must use clear and plain language.

NABO concludes that the currently documents are not fit for purpose and are non-compliant.

Issues that need addressing

Licensing process, web pages and forms

1. The Trust must provide privacy information to individuals at the time that personal data is collected. For the Trust, and for boat users, this is at the time of the licence application. Privacy is not mentioned on the licensing web pages or on the application form.
2. Similarly, the Trust does not provide links to a user's rights of access, objection, concerns, correction, deletion etc. on the web site or on the application form.
3. The only reference to Privacy documents is deep within the Terms document and only in the context of Insurance. NABO's view it that is should be up front and with equal status to the Terms.
4. In the application form, under 7 Declaration, there are negative tick box statements. Users are asked to tick if you "do not want". This is not allowed under Privacy Laws. Agreement must be freely given and not assumed.
5. There are no tick boxes on the Application Form to acknowledge or accept Terms and Privacy Policy (and Schedule). There is only a statement: "I confirm that I have...". This is not allowed

under Privacy Laws. Agreement to privacy terms must be freely given, separate from Terms, and not assumed. Best practice is to have a separate confirmatory tick boxes for Terms and Privacy Policy. It is NABO's view that there is a need for explicit confirmation, recorded separately. We accept that 'consent' is not required for 'Public Task', but this is not the same as acknowledgment which, in NABO's view, is required.

6. Instructions for the Application Form require: "where tick boxes are used, place a cross in the selected box". This is counter-intuitive. Tick boxes for agreement require a tick, not a cross.

Policy

1. The Policy states that: "We may change this Policy...without notice to you". It is NABO's view that the Policy is part of an agreement for Licensing. It provides the commitment of the Trust to process data in accordance with the Law. As such the Trust has a contractual duty to inform licence holders of changes that occur within their licensing period. This is only similar to the demands that the Trust makes on boaters in respect of, say, insurance or change of home mooring. There is no contractual right by the Trust to make unilateral changes to Licence terms in the licence period.
2. The Policy goes on to say in the context of changes: "... so please do check it regularly". NABO regards this as indefensible. Why should users be required to spend time checking changes in the Privacy Policy on the off-chance that the Trust might make a change? NABO takes the view that if a legal or any other change is required, it is the Trust's duty to inform all licence holders.
3. In the Policy, the Trust says that it may transfer personal data to its operations outside the UK. This is not clarified in the Schedule and it is unclear why this is 'necessary' for 'Public Task'. Apart from justification, NABO finds it unreasonable that the Trust holds data abroad for data processing that is consented as a 'Public Task'.
4. The Trust says that it may use automated processing. There is no information in the Schedule about this, so it is unclear how this applies to licensing. If there could be a negative outcome, agreement with a user is required. There is no agreement option for this data processing, and no option for a user to refuse permission. This is not clarified in the Schedule and it is unclear why this is 'necessary' for 'Public Task'.

Schedule

1. General consent for licensing is based on 'Public Task'. In the Schedule there is a list of data types, including items not related to licensing and therefore not 'necessary' for 'Public Task'. The 'necessary' items are not identified. There is no consent stated for items not 'necessary' (except for Equality issues). Other data types are identified in the Application form.
2. There is no consent option for data processing in respect of 'information about the waterways'. In the Application form, the Trust asks for permission to hold data for this, which is not defined. NABO believes that this is data that is not a 'necessary' part of licensing and is therefore not covered by the consent of 'Public Task'. An alternative consent is required with specific agreement.
3. There is no consent option for data processing in respect of: "*share your details with our subsidiaries and other affiliated companies*". In the application form, the Trust asks for permission to hold data for this, which is not defined. NABO believes that this is data that is not part of licensing and is therefore not 'necessary' for 'Public Task'. An alternative consent is required with specific agreement.
4. The Trust collects Special Category Data. There is some text in the Schedule and some in the Equality form. For special data, there needs to be a specific 'condition' for processing the data.

The Trust says that it does so under 'explicit consent'. There is no place for this explicit agreement on the form. It would be best if all the information was in one place in a schedule, for this purpose alone. Users cannot be expected to find this in two places where there is no reference to where this is. It would also help if the Equality Policy for Customer Service was referenced. (See also Equality form).

5. The Trust claims the need to share information with others to provide services. It claims that there is a 'legitimate interest' in the Trust sharing this information for contractual and legal obligations. For licensing, there is no need for further consent beyond 'Public Task' and the use of the words 'legitimate interest' (which is another consent basis) is confusing. Why is this 'necessary' for licensing? If it is not, what is the applicable consent?
6. 'Contractual and legal obligations' are not defined and could mean anything. NABO concludes that the Trust has not demonstrated that the processing is 'necessary' for the purpose of licensing. Unless defined and clarified, this should be considered as outside the consent of 'Public Task'. It therefore requires an alternative consent and specific agreement.

Equality form

1. This document includes an additional privacy policy statement on page 10. There is no reference to the Policy or the Schedule (where the rest of the information is placed). By way of example, the consent for special data is stated in the Schedule when it should be in the Policy Statement in the Application form.
2. On the form under Declaration, the first tick box says: "*I declare that I have read and understood....*" It is NABO's view that this wording is not appropriate for 'explicit consent'. (The words would be suitable for the Application form for users to agree to Terms and Privacy Policy etc.)
3. For clarity, there is no place on the form for 'explicit consent' for data processing, which is the condition stated in the Schedule.

Terms Changes

1. Under Insurance B4 and B5, the Trust talks about data processing issues. These are not statements that are applicable to Terms. They should be in the Schedule.
2. The Trust uses the words: "*You agree that*" and "*You agree to*" in sections B3, B4, B5 and C5. This is not appropriate language for consent 'freely given'. It also implies that users don't have to agree to other paragraphs.

Clarity and transparency

1. The current Schedule has a very poor readability score. It has a Flesch Reading Ease score of 28.9. The average sentence length is 27.2 words. There is one sentence of 77 words with a Flesch Reading Ease score of 0. This generally implies a requirement for tertiary education to understand it. Privacy laws require that the information provided to people must be concise, transparent, intelligible, easily accessible, and it must use clear and plain language.
2. The Privacy Policy on the web site is dated September 2020, and there is no access to previous versions. The current 'Privacy Schedule for Customers' on the web site is undated and without reference identification. Users are unable to identify which document was agreed to, at the time of licence application.
3. It is clear that the Trust is changing privacy policy during a licence period, without notifying users. There is no change log for the documents on the web site, so it is not possible to back track to older versions.

4. It is NABO's view that the Privacy Policy and Privacy Schedule for Customers are not transparent, intelligible, easily accessible, and do not use clear and plain language.

Corrective actions

We suggest the following:

- Put all the documents in one place and make sure that all documents work together for the user and the Trust.
- Provide a separate Privacy Schedule for Boat Licences and make sure that items from the Policy, such as overseas holding and automatic processing of data, are explained in context.
- Sort out what is 'necessary' for the 'Public Task'.
- Ensure that all processing 'necessary' for the 'Public Task' is identified and explained.
- Ensure that all data items have a consent identified. Identify all required tick boxes.
- Put a consent table in the Schedule to cover the different types of data, with the applicable consent defined. Add tick boxes to forms to cover user agreements to opt in.
- Transfer the data processing issues under Insurance B4 and B5 from the Terms to the Schedule.
- Provide an explanation of automated data processing, transfer overseas, and contractual and legal obligations specifically for licensing. Alternatively state that they do not apply to licensing.
- Provide a separate Privacy Schedule for Equalities Act requirements, with everything together. Alternatively put everything in the Equalities Application.
- Add the privacy information on user rights to the Equalities form.
- Check the readability wording of all documents and make improvements. Check the readability scores to confirm.
- Add links to the licensing web site for the current and previous dated Privacy documents, Terms and Conditions, and users' rights.
- Apply document control procedures to the licensing documents with a change log on the web site. Tell users when and why documents change.
- Make reference in the Application form to Privacy.
- Add tick box agreements to the Privacy and Terms documents on the Application form under 'Declaration'. Add opt-in tick boxes for any other data processing that requires user agreement.
- Coordinate authors of all licensing documents for each time that changes are made.

In conclusion, NABO has highlighted areas that need urgent action. In our view, the Trust should take immediate steps to ensure that all its licensing documentation is GDPR-compliant. It may be sensible to halt the current consultation on the proposed changes to Terms and Conditions, pending these changes.

We hope to hear from you shortly on the actions that the Trust proposes to take so that it will not be necessary for us to forward this document to the Information Commissioner.

End of document

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