

COUNCIL MEETING – 27 SEPTEMBER 2012

Briefing Paper – NON COMPLIANT CONTINUOUS CRUISING

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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.

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.

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 1st 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

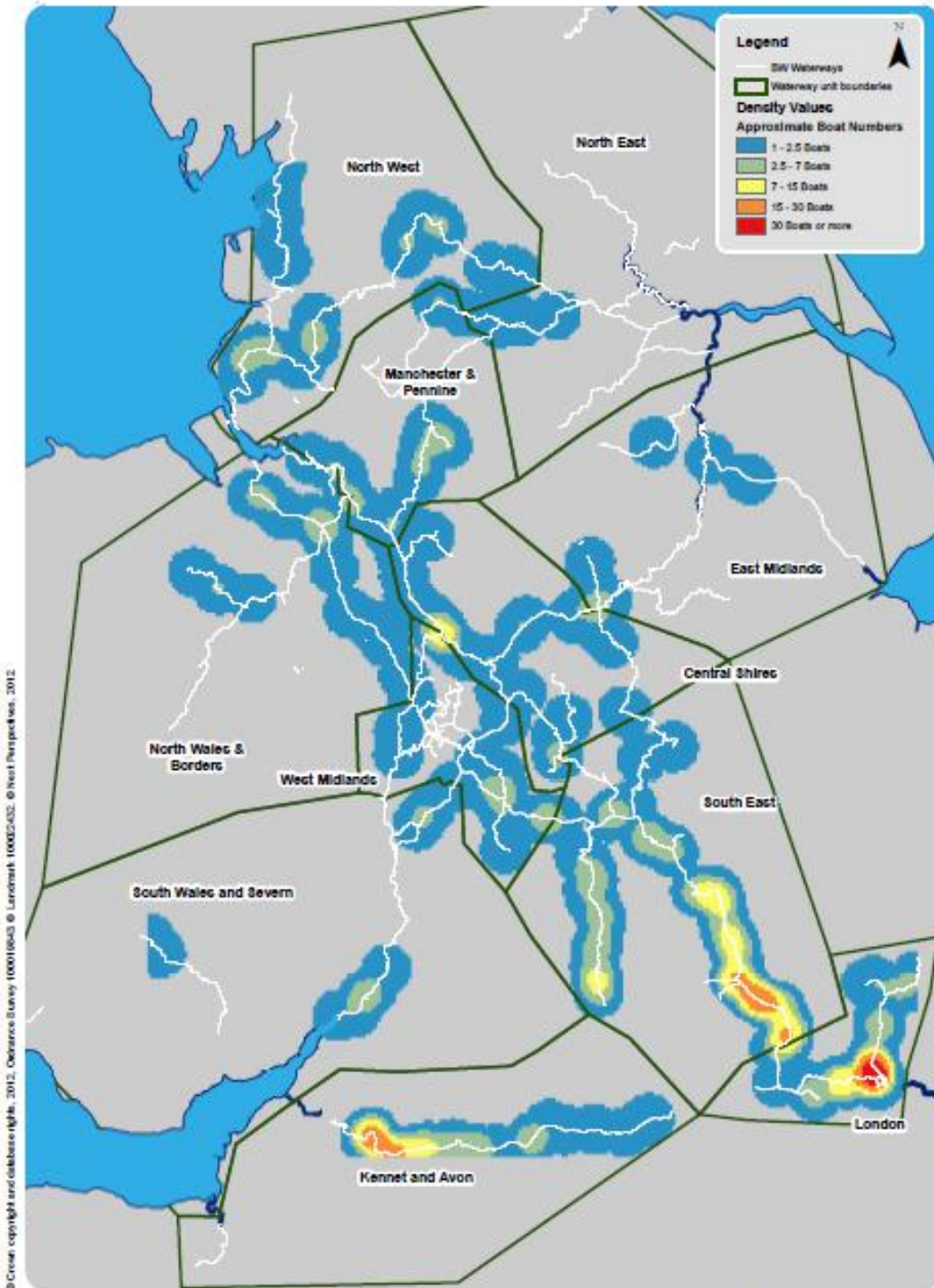
Non-liveaboards Where a boat is sunk, abandoned or otherwise not occupied, the Trust will serve a notice under Section 8 requiring removal from its waters within 28 days. If the notice is not complied with we can remove the boat from its waters without issuing Court proceedings. Both of these procedures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