



NATIONAL ASSOCIATION OF BOAT OWNERS

This is a further response to the January 2015 stated intention by CRT to make changes to the Terms and Conditions for private boat owners by the **National Association of Boat Owners (NABO)**.

NABO thanks CRT for the opportunity to respond to these changes. NABO attaches great importance to matters concerning legal requirements and the Terms and Conditions, as they have a significant impact on all styles of boating and the enjoyment of the waterways.

NABO made a response in February 2015 in haste, believing that some urgency was required. It is apparent that the plans to change the Terms and Conditions have slipped and NABO now takes the opportunity to make a fuller and more considered input. NABO urges CRT to take the necessary time to absorb all the user input to its Terms and Conditions and consider the best course of action. This is a customer relations issue as well as a legal issue and the enforcement team and lawyers should not have the last say. NABO objects to the words used in the March Boaters Update: 'At the end of January we explained the changes we're making to licence T&Cs.'

Introductory comments:

NABO deplores the manner in which CRT intends to make these changes, which clearly implies a wilful intent to impose changes without formal consultation. This is done while at the same time describing the changes as 'not reflecting a significant change of policy'. NABO rejects any assertion that the changes are minor. It notes that CRT has described the changes as 'intentions', implying that the Trust has decided what it wants to do, and does not want comments. We are invited to contribute 'if you have any comments you'd like to share with us'. This is not a way to encourage customers. CRT would do well to treat boaters as a potential 'fan club' rather than a contractual inconvenience. The changes adopt an aggressive tone and their nature suggests to NABO that the contract should be considered as unfair. NABO draws CRT's attention to Terms and Conditions for other navigation authorities, which are short, simple and clear.

NABO notes that it has in the past given constructive advice to BW on wording of its Terms and Conditions, and the current approach is a significant change in the relationship. Many NABO members have expressed the view that NABO should, on this occasion, not assist CRT; it being better to let CRT discredit itself. NABO has in the past, following detailed discussion, been pleased to publicly endorse the BW/CRT Terms and Conditions. This is unlikely to be the case on this occasion.

NABO notes that CRT intends to make changes to the Terms and Conditions, without formal consultation in accordance with the Government's Consultation Principles, which CRT displays on its website. We note that there is nothing, and has been nothing, on the 'Consultations' page of the CRT website in relation to this matter. This is without precedent for the changes that CRT now intends to make. NABO notes that BW has in the past given evidence to County Court(s) to the effect that its Terms and Conditions have been formally consulted on and were widely accepted. NABO places on record that CRT has not consulted for this intended change and that NABO formally objects to the new Terms and Conditions.

Even at this late stage, NABO recommends that CRT launches a formal consultation on the intended changes. Such a consultation should give time for full discussion, which would benefit CRT, as without this it is unlikely to achieve wide acceptance by boaters, and CRT would be unable to demonstrate acceptance.

NABO has noted the content of the March 2015 Boaters Update and regards this as superficial and failing to address the complex issues raised by the intended changes.

NABO has noted the exchange of correspondence with CRT's Head of Legal on the requirements for boats with a home mooring to 'cruise'. NABO rejects these proposals as disproportionate and unworkable. If CRT cannot manage the issues of *bone fide* navigation, it will surely fail to manage the intended 'requirements' for cruising.

NABO also acknowledges the additional information from CRT's head of Customer relations on 26 March and incorporates some further detail in the following. As a general comment we have found the additional information unhelpful.

NABO notes that some of the intended changes include new Terms and Conditions, which it is assumed that CRT intends to justify under the powers of the 1962 British Waterways Act. Such changes should be demonstrably evidence-based and proportionate. CRT must achieve widespread support from boaters for these to be effective. NABO sees no attempt to achieve any of these needs and it rejects these changes as 'need not demonstrated'. The

text highlighted here and below is used in detailed comments on sections of the Terms and Conditions given at the end of this response.'

NABO notes that the intended changes include apparent amendments to the terms of the 1995 British Waterways Act. NABO believes that these changes exceed CRT's powers and are 'Ultra Vires'. The text highlighted here and below is used in detailed comments on sections of the Terms and Conditions given at the end of this response.'

If CRT requires amendments to the Act, it should commence consultation on a new Act of Parliament. Otherwise CRT must be silent on these issues. Primary legislation cannot be overwritten by consultation or imposed contracts.

NABO believes that the intended changes represent a significant change in the relationship with boaters. The Terms and Conditions are an important part of this relationship and they should be understood by both parties and be reasonable in the circumstances. Purchase of a licence is a routine retail and discretionary activity, and boaters should not need to go to a solicitor for advice before applying. CRT may intend clever legal wording to take to County Court cases or to bully users, but it is clear that such Terms and Conditions are unfair and unreasonable. It is not reasonable for CRT to apply such Terms and Conditions to all boaters because it has failed in the past to effectively manage a very limited number of boater compliance cases. The text highlighted here and below is used in detailed comments on sections of the Terms and Conditions given at the end of this response.. NABO notes that CRT feels it necessary to describe the intended Terms and Conditions with comments in plain English. This confirms to NABO that the Terms and Conditions are written in legalese language that is intended to hide their intention from boaters. The actual Terms and Conditions should be written in words that users can understand, otherwise it is an unfair contract and self-defeating for CRT. Should CRT not chose to follow this advice, then the plain English notes should be included in the content of the Contract, so the intention of the terms are clear and binding to all.

NABO reminds CRT that its boating customers use the inland waterways because of the relaxed lifestyle and limited rules and regulations. Boaters are generally tolerant of compliance and minor misbehaviour and prefer this to over-regulation. So when a new regulation is intended, CRT will lose support and goodwill unless the need is clearly demonstrated and any unintended consequences are identified and understood. To have in-house lawyers invent Terms and Conditions without consultation is a customer relations disaster and will not achieve the desired outcome. Getting boaters to sign for Terms and Conditions, (either in ignorance or under duress) and then achieve compliance are two

completely separate things. NABO does not support new Terms and Conditions which are not evidence-based and fully consulted on. The text highlighted here and below is used in detailed comments on sections of the Terms and Conditions given at the end of this response.

NABO notes the unreasonable haste with which CRT wishes to make changes to boater's contracts without attempting to contact them. It also notes the wish to change the Terms and Conditions with one month's notice. This reflects very badly on CRT's ability to plan and manage the contractual relationship with the bulk of its paying customers. It is NABO's view that there is no credible legal and financial risk to the Trust that justifies this timeframe. The Terms and Conditions should apply to the applicable period from the date of licence application or renewal. Anything else is unreasonable.

NABO has cautioned BW/CRT many times in the past, and provided BW/CRT with our legal advice, that Terms and Conditions should be based on the applicable laws. It is not for CRT to seek Terms and Conditions that conflict with these laws or create additional requirements that are not covered by these laws. As such, CRT should add a note at the end of the Terms and Conditions to confirm that: 'A boater's agreement to these Terms and Conditions does not absolve either party from complying with any relevant law or Act of Parliament governing the canals and rivers administered by the Trust.'

Furthermore if CRT wishes to interpret laws, then it is for the Trust to take prompt action to have these interpretations tested in the courts. NABO deplores the continuing circumstance in which CRT's interpretation of the 1995 British Waterways Act of 'navigation *bona fide*' remains untested in court after 20 years. It follows that CRT is ill-advised to attempt further interpretations without and full consultation. CRT has no prospect of defending new proposals in Court.

Reference to the intended terms follows:

CRT intends 1.3: *'Home Mooring' is a mooring or other place which will be available throughout the period of the licence where we are satisfied that the boat can reasonably be kept and may lawfully be left when not being used for cruising.*

Also this wording in Schedule 2.

95 Act 17 3 1 says '(i) the Board is satisfied that a mooring or other place where the vessel can reasonably be kept and may lawfully be left will be available for the vessel, whether on an inland waterway or elsewhere'.

The intended wording is ultra vires. The previous clause is a definition of 'Home Mooring'. The intended wording confuses this with another new requirement, which is ambiguous and open to misunderstanding. A boater has the right under the '95 Act s17 to either/or, and the definition of home mooring is in this context. CRT cannot put this definition into another context and invent requirements for a boater to retain a 'home mooring' throughout the period of the licence. For any new requirement there should be a separate paragraph. We note that Boaters may legally change home moorings, or not have a home mooring, at their discretion. All that is required is that they inform CRT and provide the necessary assurance on navigating *bone fide*. Nothing more is required under the Act and CRT may not add anything.

On a purely procedural level, mooring term agreements cannot be made at the same time as boat licence applications, and to attempt to co-ordinate these is unnecessary and impractical. The intended wording is blunt and not correct.

With respect to the requirement to 'cruise' NABO suggests that it does not say 'used for cruising', but says 'when elsewhere'. We note from 26 March that CRT do not like this simplification. We still feel that any intended requirements to Cruise are better described at 3.1 See also below under 3.1.

1.9 Tender length. Need not demonstrated. Not evidence-based. NABO is not unsupportive of the issue. Clearly there has to be some limit on the size of tenders. This particular intention would result in the boater incurring cost to change a tender longer than 3m and could result in the market for tenders over 3m collapsing. NABO suggests greater flexibility in the length involved. The intended 3m would exclude many canoes to the detriment and reasonable expectations of users. We note that no evidence is presented as to the reason for this intended requirement.

1.10 Joint and several liability. Ultra vires. CRT cannot in law impose a contractual requirement on a third party who is not a signatory to the licence agreement. NABO notes that CRT is in apparent agreement with this because of intended clause 11.1. In a fair contract, what is good for one party, is good for the other. There is no current requirement for registration of boat ownership. NABO rejects the intended term.

3.1 CRT intends: *“You must cruise on the waterways whilst you are away from the home mooring (save for any period when you leave the waterways or when the boat is lawfully moored at another mooring site)”*.

Ultra vires. Not evidence based. This is a very significant change to the requirements and needs further debate. There is no requirement in the '95 act to 'cruise' although NABO acknowledges that this word has been used in previous versions. BW invented the 14-day rule for those with a home mooring, and cites the '62 Act's powers (as it sees fit). This is widely accepted as reasonable, but there is no specific legal requirement to do more. If CRT now wishes to further define this requirement it must clarify what it means and how this complies with the Acts, and provide evidence as to the necessity. NABO notes that previous suggestions to introduce no-return rules and the like have failed for the same reasons.

NABO has seen the Head of Legal's intentions with regard to requirements for 'cruising' and rejects these as fanciful, unworkable and ultra vires. We note that CRT does not have the capability or technology to manage and enforce these intended requirements. They are clearly intended to 'make a case' against an errant boater who is under consideration for breach of terms. They cannot be applied to all, and in the context of the enforcement history for continuous cruisers, could be considered laughable. The intended term solves nothing and potentially moves the behaviour to a different place. For example CRT may decide that a boater is only visiting his home mooring for a nominal period. Now guidance is needed as to what is reasonable. Such nominal period behaviour may be encouraged by the intended requirement to return. The issue requires extensive discussion, notably with a clear problem statement and need to action.

3.3 CRT intends: *The licence does not give a right to moor that is sufficient to meet the requirement in the British Waterways Act 1995 for the boat to have a home mooring.*

Unfair and unreasonable. NABO notes that this term is unchanged from the previous version, nevertheless, it is still lawyer's gobbledegook. We note from 26 March that CRT do not wish to change this. Our comments still stand. It is still incomprehensible to the average user. NABO believes that it means 'if you have no home mooring, you cannot adopt a bit of towpath and call it a home mooring.' NABO notes that CRT has in the past waived this intended clause if a boat is prepared to pay a fee. It is called a Roving Mooring Permit. NABO is not content that CRT makes requirements and then waives them for financial gain.

This is normally considered corrupt practice. NABO rejects the intended term and the warped thinking.

3.4 Right of boater with home mooring to give it up: Ultra vires. Not evidence based. A boater has the legal right to give up a home mooring and CRT cannot unreasonably refuse this. The right cannot simply be deleted from the Terms and Conditions. CRT has presented no evidence to justify this change and NABO rejects the intended term.

6.4 CRT intends: *If the Boat remains on the Waterway unlicensed for any period, whether following expiry or termination of the Licence, we may charge you pro rata the equivalent of the Licence Fee for that period (to cover your use and occupation of the Waterway). This does not affect any other rights or claims we may have against you, including any rights we may have for breach of these Conditions.*

Ultra vires. Need not demonstrated., Unfair and unreasonable. CRT has specific powers and remedies under the '95 Act and should be content with these. This intended wording exceeds those powers and is ultra vires. The last sentence is clearly worded to confuse and scare boaters without evidence or justification. No evidence is presented to justify the term. NABO deplores this behaviour and rejects the intended term.

6.5 CRT intends: *“We may recover from you any costs, charges and/or expenses that we may incur as a result of your failure to comply with the conditions. Examples of what we may seek to recover from you include, but are not limited to: (i) legal costs (ii) daily charges which may be applied for etc.”*

Ultra vires. Need not demonstrated. Unfair and unreasonable. CRT has specific powers and remedies under the '95 Act and should be content with these. This intended wording exceeds those powers and is ultra vires. CRT has no general power to recover costs and, in the case of legal costs, these can only be awarded by Court order. CRT should not be able to invent costs and then take debtors' action to avoid a County Court action in which a boater can defend himself or herself. NABO does not trust CRT to take proportionate action. The wording of the intended terms “but are not limited to” is disproportionate, unfair and demonstrates exactly why NABO mistrusts CRT's intentions. CRT has remedies under the '95 Act for moving and should be content with these. NABO rejects the intended term. We

note from 26 March that CRT considers that this as: *“the right to recover charges, costs and expenses is about restitution, it is not a penalty. In line with our responsibilities as a charity, we do have to protect our resources and recover costs wherever appropriate.”*

NABO rejects this comment. CRT’s powers are limited by law. If they want more, go to Court or Parliament. NABO deplores playing the “charity” trump card. There are no bigger supporters of and contributors to the charity than boaters. It was boaters that made the major supporting contribution to the set up of CRT. Without boaters, CRT would not exist. It is inappropriate and irrelevant to use this argument now. Intended changes must be justified on a legal and proportional basis.

7.6 CRT intends: *“..... You will not be held responsible for events that are outside your control provided you have taken all reasonable steps to prevent such damage or nuisance.”*

Need not demonstrated. Unfair and unreasonable. A normal boater cannot reasonably interpret this legalistic requirement and cannot imagine what steps would be reasonable to satisfy CRT. No guidance is given. Furthermore neither the boater or CRT can in law impose a contractual requirement on a third party who is not a signatory to the licence agreement. NABO notes that CRT is in apparent agreement with this because of intended clause 11.1 In a fair contract, what is good for one party, is good for the other There is no current requirement for a helmsman to have a qualification. NABO rejects these added words to the intended term.

7.7 CRT intends: *“You agree that: (i) we can board the boat and/or enter any land you may own or occupy which is adjacent to the boat, in order to affix or place on the boat, correspondence, contractual or statutory notices or court papers; and (ii) we can come on board the boat to inspect it where we need to check you meet these conditions, and we can cross the boat for the purpose of accessing any adjacent boat that cannot otherwise reasonably be accessed from the bank etc.*

Boarding a boat is a sensitive issue. It is a significant matter of courtesy and respect to customers, who by convention only board other boats after permission is given. There is also an issue of trespass on property. NABO does not condone using these barriers to prevent enforcement teams undertaking their legitimate activities or essential navigation or safety issues, but this is the limit that NABO can support It must be clear that CRT staff may only

board a boat at their own risk, and that CRT is liable for any damages caused to boaters' property by their actions. We note from 26 March and the FAQ agreed that CRT is not intending new powers, other than the law and accepts liability. NABO is therefore silent on this. Amended wording is needed to cover these issues.

7.9 and 7.10 CRT intends: *"You agree that we may confirm to third party(s) whether or not the boat is appropriately licensed and/or whether you are complying with these conditions and, if not, whether we have commenced enforcement proceedings or are proposing to do so" and "You agree that where we believe you are failing to comply with the conditions, we may exchange information relating to you and/or the boat with third parties if we consider such action appropriate or necessary... etc."*

Need not demonstrated. NABO is not unsympathetic with the requirement but is concerned over the mis use of data and the unintended consequences for boaters. The world is littered with data abuse cases. No evidence is presented to justify the need and proportionality of this change. NABO would like to see confirmation from the Information Commissioner's Office that these clauses comply with the Data Protection Act 1998. CRT should specifically be liable for customers' loss in the event of misuse of this term. Amended wording is needed. Furthermore no description is provided as to what CRT considers the significant term "appropriate or necessary."

We note from 26 March *"We are satisfied that the provisions we have included in these clauses are compliant with the Data Protection Act. By obtaining a licence subject to the terms and conditions, the licence holder is giving their consent for CRT to deal with their personal data in this way. This is in accordance with data protection principles and is entirely proportionate to the Trust's need to effectively manage the use of its Waterways."*

NABO notes that CRT have convinced themselves that all is well, but offers no evidence as to why this is the case, or why it is proportional. Nothing is offered from the ICO re assurance on consequences of misuse. NABO finds this response is unhelpful and unreasonable. NABO cannot accept these assurances or the intended term. We suggest that CRT should at least have a box that a boater could tick opting in to giving CRT permission to share their data as per 7.9 and 7.10.

8.3 CRT intends: *"No refund will be payable for any period of suspension or for what would have been the remaining period of your licence if it had not been terminated in accordance with this Condition 8.3.*

Ultra vires. CRT has specific powers and remedies under the '95 Act and should be content with these. This intended wording exceeds those powers and is ultra vires. CRT has no general power to impose fines, which can only be award by court order. This amounts to corporate theft. CRT should refund in accordance with the payment terms anyone who cancels a licence. CRT offers no explanation as to why this term is needed or necessary. CRT is not exposed to significant loss or risk. NABO rejects the intended term.

We note from 26 March *"The terms and conditions do allow for refunds where the licence is terminated before it expires. Such a right is reasonably not available if the boater is in serious breach of the terms and conditions and their licence is suspended."*

NABO rejects the response. The law is the law and applies to all. It may be unreasonable indeed unpalatable to make a payment to someone in breach, but that is an emotional issue, and should be set aside. CRT will not go bankrupt because of this. NABO cannot accept this argument and rejects the intended term.

8.4 CRT intends: *"If your licence is terminated in accordance with this Condition 8, you agree that for the remainder of what would have been the licence period, you will not apply for a new licence and you will remove the boat from our waterways. Should you apply for a new licence during this period, we will not consider the application.*

Ultra vires. Need not demonstrated. Unfair and unreasonable. The requirements for the licence are within the '95 Act and this term exceeds those powers. There is no evidence presented to justify this change. NABO consider that this is unnecessary and bullying. CRT has the powers to refuse a licence in some limited circumstances and it does not need a licence applicant's 'agreement' for this. There is no need for such wording and this should be removed. NABO rejects the intended term

We note from 26 March *"CRT does have statutory powers to refuse to licence in certain circumstances. This clause prevents those who have had their licence terminated from reapplying for a licence within a limited period of time resulting in valuable CRT resources being wasted by having to process and consider unreasonable and unmeritorious applications.*

This intended term “prevents” nothing. NABO has sympathy in protecting CRT against time wasters, but this doesn’t not solve the issue. Dealing with awkward customers is a fact of life and to be expected as part of the duties of a navigation authority. CRT has to take these issue in the round. CRT will not go bankrupt because of this.

NABO cannot accept this argument and rejects the intended term.

8.5 CRT intends: *If we do renew, we reserve the right to issue a licence subject to such additional conditions as we see fit (including issuing you with a shorter licence than you may have applied for).*

Need not demonstrated. Potentially ultra vires. There is no evidence presented to justify this change. NABO considers it to be a poor principle that CRT can invent new terms for minority boaters. This is non-transparent and feels like bullying tactics. The terms should state specifically what is intended, or be silent. Revised wording is needed.

8.6 CRT intends: *“Upon termination or expiry of your Licence, you are responsible for immediately removing the Boat from the Waterway s. If you fail to remove the Boat, we may move or remove it in accordance with our statutory powers (and in some circumstances, we may have to dismantle or destroy the Boat in order to move or remove it). The Trust may recover from you any costs, charges and/or expenses, we may incur in doing so (in accordance with Condition 6.5). The Trust will not be liable for any damage or losses you may suffer or incur as a result of our action or inaction under this Condition 8.6 .”*

Ultra vires. Need not demonstrated. Unfair and unreasonable. The powers for cost recovery are within the '95 Act and this term exceeds those powers. There is no evidence presented to justify this change. CRT cannot absolve itself of its legal responsibility in handling a boater’s possessions. It must take due care. NABO rejects the intended term.

8.7 CRT Intends: *Any provision of these Conditions that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Licence shall remain in full force and effect.*

Ultra vires. Need not demonstrated., Unfair and unreasonable. The powers for these issues are within the '95 Act and this term exceeds those powers. There is no evidence presented

to justify this change. The wording is not written in plain English as demonstrated by the need for extensive explanation. NABO rejects the intended term.

10 CRT intends: *We may from time to time review and revise the conditions. You will be given at least one month's prior written notice of any substantive changes and we will tell you the reasons for the change. At the end of the notice period referred to above, the changes will be effective and you will be issued with the new revised conditions that replace the previous conditions. You will be deemed to have accepted the changes by keeping the boat on the waterways.*

Need not demonstrated. Unfair and unreasonable. There is no evidence presented to justify this change. This is aggressive and unreasonable and, in NABO's view, could be seen as unfair contract practice. The terms apply when a licence is purchased and the applicant signs up for this for the licence period. This is then the 'contract' which CRT is wishing to use to enforce and enhance its powers. But it holds the contract in contempt by seeking agreement to vary it 'on the fly'. Is CRT really so uncertain about the terms that it cannot plan a year ahead?!

CRT may have the powers for this, but this is not the way to treat valuable customers. CRT cannot possibly need or justify any business risk to have an instant change for everybody at the same time. This is typically lazy, bad management practice. NABO rejects the intended term.

11 CRT intends: *"all kinds of legal clauses".*

Need not demonstrated. Unfair and unreasonable. There is no evidence presented to justify these changes. This is aggressive and unreasonable and in NABO's view could be seen as unfair contract practice. The wording is complex and not readily understood. The wording is deliberately written in legalese, and not in plain English as demonstrated by the need for extensive explanation. It is not reasonable for boaters to understand this without legal advice. It is thus deliberately unfair and holds customers yet again in utter contempt. NABO observes "The court can hold a rule to be invalid even though it is contained in a contract". (Lord Denning. *Nagle v Feilden* (1966) 2 QB 633). NABO deplores these changes and rejects the intended terms.

We note from 26 March “*We are satisfied the clauses are reasonable and entirely appropriate. They are standard boiler plate clauses of the type often included in contracts. It is good practice to include them for clarity.*”

Again NABO notes that CRT have convinced themselves that all is well, but offers no evidence as to why this is the case, or why it is proportional. NABO accepts that the terms may be boiler plate in other areas of contract, but that does not mean they are justified here. This is an intended contract between unequal partners imposed in conditions of restricted trade. CRT as a Charity have a duty also to consider both sides of the argument, to encourage boating and not take a restrictive and unjustified risk position. BW have managed for many years without these, and other navigation authorities do not use them and have not expressed a need. CRT will not go bankrupt because of this.

NABO cannot accept these intended terms.

11.2 CRT intends: “*If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question will not be affected.*”

NABO considers this intended term to be extraordinary in the circumstance. CRT has the sole extensive experience over many years with in house lawyers, legal counsel, and case experience. CRT holds itself above all others in understanding the law and creating interpretation, and hiding judgements from interested parties. The parties in the contract are unequal, and the boater is entitled to expect that CRT know what they are doing and speak with authority. Yet CRT in seeking such a clause as this, ‘just in case it has got it wrong’. Here is prime evidence that the intended terms are unfair. CRT should stand by their words and take the consequences.

NABO rejects the intended term.

This completes the NABO submission.

2 April 2015