

Refreshing signage and rules for South East visitor moorings sites: boater consultation Jan-Feb 2013.

This is the response to the consultation by the National Association of Boat Owners. (NABO).

The National Association of Boat Owners is dedicated to promoting the interests of private boaters on Britain's canals, rivers and lakes. NABO was formed in 1991 and represents over 3,000 boaters predominantly on the waterways operated by the Canal & River Trust and the Environment Agency. Views of members are obtained through correspondence, Association publications, surveys, open meetings, and face to face contact with boaters at boat shows and on the waterways.

Thank you for the opportunity to respond to this local consultation. NABO attaches great importance to all mooring strategy as it has a significant impact on all styles of boating and the enjoyment of the waterway.

Should CRT wish to discuss this response, the following contact should be used:
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NABO agrees that there are some parts of the waterways that are congested and that there can be limited availability of mooring for local leisure and visitor cruising at designated visitor moorings at certain times of the year. There has been a poor track record on defining the problem in the past (e.g. The River Lee and the K&A). It is not a matter of denying the problem: we agree there are hot spots, but we do not wish to see widespread rules that are not required. We already hear evidence of enforcement officials picking on soft targets, rather than tackling the worst cases. This will cause enormous resentment. We would like to see consistent rigorous enforcement of existing regulations in the hot spots (and elsewhere). We will get nowhere until boaters can expect to be asked to conform to this basic requirement.

However NABO are concerned that CRT has not published **any** evidence gathered from regular inspections by its own staff to support any of the proposed changes. When CRT makes proposals for mooring periods, it would be helpful if an individual explanation was given. Furthermore it would appear that CRT's intent is that once the changes are implemented subsequent daily inspections would be used to confirm or otherwise that the proposed changes were necessary. NABO would suggest that this is the wrong way of implementing changes and would suggest that CRT should seek to carry out daily inspections for a defined period on the proposed sites both at high and low season to determine the extent of the need and then propose a solution, should a solution be required, to address that need.

It should be expected that at busy times, it is not possible to find a visitor mooring at a hot spot late in the day, and it is an unreasonable expectation that this should be the norm for private, share or hire boaters. To this end, a desire to achieve the maximum possible turnover of visitors just by shortening the periods is an unrealistic expectation. Additional visitor moorings must therefore be another option that CRT employs. It is not currently clear if the problem is too many boats, too many boats not moving or just not enough mooring.

For over a decade one of our longstanding criticisms is that while boat numbers have increased substantially, infrastructure and facilities for visiting boats have not increased proportionately. Such shortage of space is often popularly attributed to liveaboard continuous moorers but observations made by some NABO members of current Visitor Mooring usage do not support this view.

Where there is no sign, the default maximum stay is 14 days for any boat. NABO supports the principle of accurate signage and full usage of visitor moorings, and that this can be encouraged by limiting the longer periods currently available during peak periods. However NABO believes there should always be a mix of durations to cater for different boaters needs.

NABO notes that CRT has a good track record of flexibility with boaters in exceptional circumstances and encourages this.

NABO welcomes the use of Mooring Rangers providing these are CRT employees (and not volunteers or third party contractors) and supports the enforcement of the current 14 day or lesser mooring regulations and has noted that in many of the 22 moorings listed there are currently (February 2013) substantial mooring spaces available so the current enforcement practices would appear to be effective. We urge caution in making extended stay charges when there is no demand for moorings, and there is no evidence of serious abuse.

NABO is concerned that the hire boater may be exempt from these proposed changes - why is this? NABO would seek confirmation that all boaters (private, share, hire, commercial) would be subject to any rule changes and charges levied.

NABO is concerned over the validity of the presumption that boaters will readily pay ad hoc mooring charges. However NABO believes that the figure of £25 proposed is well over a market rate for an overnight mooring typically more like £10 in a marina where some services like security are provided therefore we conclude that there is an element of penalty/deterrent in this cost. NABO challenge the proposed figure of £25 as exceeding CRT's powers to charge this fee as a service.

We do not object to the principle of charges being made for overstaying on time limited moorings providing the range of visitor moorings available cater for the needs of all boaters. We welcome the commitment to enforce visitor mooring compliance with daily towpath observations. The extent of any penalty or service charge must be clearly spelt out. If a boater does comply with the new guidance and does not pay, will the only sanction be credit control or will BW use powers under the 83/95 Acts? There is a need to be clear. Similarly if a boater complies and pays dues, will he be deemed to satisfy BW for the purpose of 95 Act s17? There is a need to say so.

NABO would question whether the additional cost of the extra staff that would need to be hired to daily enforce these proposals (especially if similar schemes are introduced elsewhere on the canal system) would not be better spent in extending the existing visitor moorings to cater for the increased demand if this need is shown to exist.

NABO notes that these proposals will impact on boats with home moorings who regularly visit local pubs at the weekend. NABO has not seen any data that indicate that this is a significant issue at this time, and there is no gain from further subjective rules.

How will a continuous cruiser be with no fixed address be aware that he has incurred an extended day charge?

We must take this opportunity to reiterate the following points in relation to the legality of any proposed changes and ask again that CRT demonstrate that they are within their existing legal powers. Primary legislation is not to be construed by reference to general policy statements or departmental guidance:

Changing from a penalty to a charge for a service.

NABO query whether CRT can change the current £25 penalty to a charge for a service. NABO's own legal advisers have confirmed that "It is a general principle of law that public authorities require express statutory authority to levy charges (McCarthy and Stone Developments Ltd v Richmond upon Thames LBC (1992) AC48)

Section 43(3) of the 1962 Act provides a power to demand charges for BWs services but this is not the same thing as the power to fine." Blackstone Chambers

No return – fixed days per month.

There is no specific power for this and we know that BW was refused these powers in the build-up to the 1995 Act. There has never been a satisfactory explanation of the need for this. CRT can expect to be challenged. Use of the 1962 Transport Act has to be proportionate and in the case of no specific evidence and demonstration of the need, NABO rejects this is appropriate.

There are many circumstances where returning in less than a month is reasonable, for instance: Share boaters, and those who cruise locally from their home mooring, will be disadvantaged by inflexible no return rules.

However where boaters return to the same moorings solely with the intent of avoiding a home mooring, who are clearly not 'bona fide navigating' (bfn), CRT should use this as evidence in a prosecution, but only as part of their evidence a pattern of wider behavior.

We appreciate that evidencing patterns of behavior is time consuming but are concerned that blanket rules are a disproportionate response to the problem and will adversely affect the majority of boaters whose boating patterns are legitimate.

In the schedule of moorings, we comment individually where we have detailed knowledge to hand. In doing so, we keep the following guidelines in hand:

- There should be a mix of 48, 7/14 day mooring available in all locations.
- 24 hours is not favoured.
- 2 hours outside supermarkets and the like is appropriate, though they are hard to monitor.
- Special sites like pubs, museums, village centres etc should be consulted on individually at a local level. It should not be assumed that short periods are best for users or local businesses and attractions. We note that that BW and now CRT's record on the effectiveness of local consultation is at best variable.
- We are unable to comment on 5 of the 22 sites as CRT has not identified the changes they propose to make. Why are they included in the consultation?

Site Name	Comment
Thrupp/Gunpowder	There is likely to be a shortage of available mooring regardless of duration in high summer. Outside July and August existing 14 days moorings should revert to 14 days or some should be a minimum 7 days. Where is the CRT evidence justifying these changes? Retain Shipton 14 day zone all year.
Stoke Breune	Some 7 day moorings are needed, 2 day moorings should become 7 days outside July and August. Any new 1 day mooring proposed should be changed to 2 days if the need is proven. There should be no mooring at service point when not using services. Where is the CRT evidence justifying these changes?
Foxton	Outside July and August the 7 and 2 day moorings should revert to the previous 14 days. What is the proposed mix of 7 and 2 day moorings? There should be sufficient 7 day moorings. There were ample mooring spaces available Feb 2013. Where is the CRT evidence justifying these changes?
Marsworth	Any change to a mix of 7 and 2 day moorings if the need is proven should be for July and August only. There would appear no justification for any 1 day moorings. The White Lion has been closed for some time. There were ample mooring spaces available Feb 2013. Where is the CRT evidence justifying these changes?
Cowroast	There should be some 14 day moorings. There were ample mooring spaces available Feb 2013. Any change to a mix of 7 and 2 day moorings if the need is proven should be for July and August only. Where is the CRT evidence justifying these changes?
Berkhamstead	There should be some 14 day moorings. Any change to a mix of 7 and 2 day moorings if the need is proven should be for July and August only. Why is the availability for 14 day mooring below the Rising Sun being removed? A short term shopping mooring by Waitrose is a good idea similar to that by Tesco at Linslade. Where is the CRT evidence justifying these changes?
Batchworth	There should be some 14 day moorings. Any change to a mix of 7 and 2 day moorings if the need is proven should be for July and August only. The proposed 1 day mooring should be changed to 2 days. Where is the CRT evidence justifying these changes?
Cropedy	There is likely to be a shortage of available mooring regardless of duration in high summer. Existing moorings timeframes need to be enforced.
Banbury	There should be some 14 day moorings. Any change to a mix of 7 and 2 day moorings if the need is proven should be for July and August only. Where is the CRT evidence justifying these changes?
Lower Heyford	There should be some 14 day moorings. Any change to a mix of 7 and 2 day moorings if the need is proven should be for July and August only. There were ample mooring spaces available Feb 2013. Where is the CRT evidence justifying these changes?

Brownsover No observations made. Where is the CRT evidence justifying these changes?

Hillmorton There should be some 7 & 14 day moorings. Any change to 2 day moorings if the need is proven should be for July and August only. Where is the CRT evidence justifying these changes? We note that in a recent FOI request CRT confirmed that they had never received a complaint concerning a boater's inability to find a mooring on the designated visitor moorings

In summary

NABO recommends that any changes to the visitor moorings be undertaken only when a better evidence-based case is available. These proposals should at least be deferred until CRT has carried out a period of daily observations both in the spring and high summer: this will enable them to quantify the periods that boaters are currently spending on the 22 visitor mooring sites and also with a focus on enforcing the existing regulations. These observations should be the basis for any new proposal for altering the current mooring durations or extending visitor moorings to meet the observed need.

No special weight should be given to hire boats, share boats or the trade groups. NABO suggests that should CRT adopt these rules or similar they should apply them such that there appears a clear and consistent policy.

With specific regard to the documentation that supports the changes to Thrupp moorings NABO would point out that Thrupp volunteers need to be trained, identified and insured. They could be summonsed to appear in court to testify to their reports of overstaying. They would also be open to cross examination in the witness box as to their motivation in becoming wardens, and their attitude to for instance continuous cruisers. Has CRT made them aware of this and made suitable provisions.

CRT has not said why they think their proposals will be effective. NABO ask that any analysis is published.