

British Waterways,
64 Clarendon Road,
Watford
Herts.WD171DA,

National Association of Boat Owners

Address redacted to protect privacy

15.09.09

Attention: Sally Ash.

Dear Sirs,

GENERAL TERMS AND CONDITIONS FOR BOAT LICENCES
Formal complaint re British Waterways exceeding their powers under existing legislation

Following the revision to General Terms and Conditions for Boat Licences in October 2008 NABO has received questions and complaints from the membership about aspects of the document which appear to be at variance with the written law.

Accordingly we have sought legal guidance through our solicitor, Shakespeare Putsman, and legal Counsel. We list below the key issues of our complaint.

1. British Waterways may not legally deny or withhold a licence if a boater breaches the continuous cruising guidelines which do not have the force of law but are stated as a requirement in the Terms and Conditions.
2. Boats with a permanent mooring under BW Act 1995 section 17 iii (c) (i) contrary to the wording of the Terms and conditions are not bound by or subject to the 14 day rule.
3. BW do not have general authority to remove boats over-staying mooring time limits under the 1983 Act s 8 (5) nor can such boats be regarded as an obstruction to navigation.
4. BW do not have general powers to interpret the law, and specifically not in the case of BW Act 1995 s 17 (c) (ii) to define navigation.

NABO consider that BW does not have the freedom to introduce changes to the terms and conditions including the moorings guidelines and thus the way in which the law may be applied to boat owners. In consultation, BW staff have stated to NABO that BW have additional rights as a land owner which are over and above the conditions governed by Act of Parliament. NABO understands, following legal advice, that BW's powers are limited and conditioned by its statutory powers and there are no other special powers available.

NABO has always been entirely supportive of strong and well understood licence terms and conditions, underwritten by legislation, to support the current critical situation on the towpath.

NABO observes that British Waterways:

Fails to acknowledge the written law.

Takes upon itself to interpret the law.

Takes action against users with interpretations masquerading as law.

Makes no effort to remedy the situation by introducing legislation to empower the management of the waterways.

This is an unsatisfactory situation, unclear and unfair to boaters, and open to misinterpretation by enforcement staff and the courts.

Please record that as a formal complaint in your procedure. We look forward to your reply within 21 days. Any response should be to the writer at the above address or email address.

Yours faithfully,

for and on behalf of the council of the National Association of Boat Owners.

....., Council member. (*signature redacted for privacy protection*)

Copies to : Tony Hales, Chairman, British Waterways,
Robin Evans, Chief Executive, British Waterways,
Sarah Nason, Defra,
Hillary Bainbridge, Waterway Ombudsman,
Shakespeare Putsman LLP.



Addressee redacted for privacy protection

Our Ref JAL/DW

10 October 2009

Complaint by NABO concerning General Terms and Conditions for Boat Licences

I am responding to your complaint sent for the attention of Sally Ash as the issues you raise are almost wholly legal.

I note that the assertions and allegations you make are mostly generic and are all made without legal argument or reasoning, notwithstanding the advice you have received from professional lawyers. As such it is difficult to respond other than by a general denial of your assertions. I shall nevertheless seek to provide appropriate reasoning and argument but reserve the right to add further argument and reasoning in the future should the issues under consideration become more defined or specific.

BW general discretionary power to determine terms and conditions

Section 43 of the Transport Act 1962 (as amended) gives BW a broad discretionary power to determine the terms and conditions under which any ship or boat may use any of the inland waterways owned or managed by it. I note you do not refer to this key statutory provision in your letter and therefore wonder whether those advising you are aware of it, since many of the assertions you make are not sustainable in the light of it.

The relevant parts of the section read (with emphasis added) as follows:

*Section 43(3)the British Waterways Board shall have power to demand, take and recover or waive such charges for their services and facilities, **and to make those services and facilities subject to such terms and conditions, as they think fit.***

Section 43(8) The services and facilities referred to in sub-section (3) of this section include, in the case of the British Waterways Board, the use of any inland waterway owned or managed by them by any ship or boat.

The words "use of a waterway" are sufficiently broad to cover matters of both navigation and mooring. There are some constraints on this broad discretionary power – both those in general consumer law and some specific provisions such as the British Waterways Act 1995. The default

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position is however a broad discretionary power on the part of BW to determine "such terms and conditions" for the use of its waterways by boats "as they think fit".

British Waterways Act 1995

The provisions of Part III of this Act apply certain requirements in respect of the regulation and management of waterways to both BW and boat owners but do not amount to a comprehensive statutory code. To the extent that issues relating to the use of inland waterways owned or managed by British Waterways are not addressed by these or other specific provisions, the default broad discretionary power given by section 43 of the Transport Act 1962 applies.

'14 day rule' for continuous cruisers

Section 17(3)(c)(ii) applies a 14 day rule to 'continuous cruisers'. The provision needs interpretation for the purposes of its practical application and enforcement. Any citizen or corporate body is not only entitled, but is also obliged, to interpret the law in order to comply with it. Any interpretation of a statutory provision given by a court of record is authoritative. In the absence of any such authoritative interpretation it is the duty of any citizen or corporate body subject to a statutory provision to interpret that provision in a manner that the person or body believes in good faith will result in proper compliance with it.

In drawing up the Continuous Cruising Guidelines that is exactly what BW has done, as it is entitled to do. The Guidelines specifically acknowledge that it is guidance only but nevertheless state that they are based on professional legal advice and are believed to reflect the interpretation a court would apply. Pending the availability of such an authoritative interpretation (which will only come once their application is challenged in a court of law) BW is both entitled and obliged to apply an interpretation that it believes in good faith is correct and proper. The Guidelines were drawn up in consultation with representatives of interested user groups and I note that in your letter you do not challenge that interpretation or provide any alternative. Should you wish to do so, any challenge or alternative will have to be based on sound legal reasoning and argument.

'14 day rule' for general casual mooring

The British Waterways Act 1995 imposes a 14 day rule on continuous cruisers but is otherwise silent in respect of other users. Accordingly BW is entitled, using the broad discretionary power given by s.43 of the Transport Act 1962, to apply a 14 day rule for casual mooring through its General Terms and Conditions for Boat Licences. This 14 day rule is well established and has broad acceptance. Indeed the absence of any such limitation on the period of casual mooring would make the requirement to have a 'home' mooring under s.17(3)(c)(i) entirely otiose. Thus the very existence of that statutory requirement implies a limitation on mooring elsewhere on the network. That limitation is lawfully applied using terms and conditions issued in accordance with the powers given to BW under s.43 of the Transport Act 1962.

Moving vessels under s.8(5) British Waterways Act 1983

The power under s.8(5) British Waterways Act 1983 is to move boats, not to remove them. The power of removal is separate and is effected under s.8(2) of that Act. Schedule 2 of the 'General Terms and Conditions for Boat Licences' correctly refers to BWs' power move boats under s.8(5) not remove boats as you incorrectly state in your letter. The overstaying by a boat on a mooring and thus denying its use to others has been held to be an

