

WHAT TO DO IF YOU GET A "PRE-CC1", A "CC1" OR SIMILAR LETTER FROM BW

Pre-CC1, CC1, what the ** are they?**

BW operates what it calls the "continuous cruising procedure" as part of its enforcement process against boaters without a home mooring. This procedure consists of a series of 5 formal letters: CC1, CC2A or CC2B, CC3, LA4 and LA5. In addition to this, BW has recently added the Pre-CC1 letter to the procedure. You will find these codes at the top of the letters.

The Pre-CC1 is what BW refers to as a "polite letter" telling you that you're not complying with their legal requirements because you are not moving your boat according to their *Guidance for Boaters Without a Home Mooring*. It asks you to comply but does not require a reply.

CC1 says that your boat has been seen between two points over a period of several months; that you are not moving your boat in accordance with BW's legal requirements which are set out in the Mooring Guidance that you are at risk of losing your boat. It asks you to contact BW to say what you are going to do.

CC2A is similar to CC1 which BW sends if you write back saying you are complying with their legal requirements and they believe you are not. CC2B is the letter they send if you ignore the CC1.

CC3 is the letter terminating your licence. It asks you to return your licence discs and get a refund of the unused months. It includes Section 8 and Section 13 notices giving you 28 days to remove your boat from BW waterways (Section 8 (2) of the British Waterways Act 1983 and Section 13 (2) of the British Waterways Act 1971).

LA4 is the fourth letter in the "liveaboard procedure" (LA1 to LA3 refer to unlicensed liveaboard boats). This states that having terminated your licence and served the Section 8/13, as you have not removed your boat, BW will take you to court if you do not remove your boat within 14 days.

LA5 is the letter saying that as you have not removed your boat, BW has instructed its solicitors to start court proceedings against you to get a court order enforcing the Section 8/13 and to get an injunction banning you from bringing your boat onto their waterways for ever. If you breach an injunction you can be arrested. The court process can take a year or more.

The Pre-CC1 does not require a reply. The other letters do require a reply. If you ignore them, BW will carry on with the enforcement process regardless. The only exception might be if you go on a long journey after you get a CC1 or CC2A/B. Patrol notices don't always require a reply. Most of them are issued to overstaying boats and require you to move the boat. In most cases they must give you 28 days to comply. If a patrol notice is incorrect, challenge it - see below.

Are these letters legal?

The letters are saying that you have to move your boat in a way that exceeds what the law requires you to do. Section 17 3 c ii of the 1995 British Waterways Act says that you must use the boat *bona*

fide for navigation throughout the period of your licence. Before the Act was passed, BW told Parliament that the test for whether a boat was being used *bona fide* for navigation was whether it had stayed in one place longer than 14 days where a longer stay was not reasonable (ie there was no navigation stoppage, engine breakdown, etc). Now, BW say that the test for whether a boat is being used *bona fide* for navigation is more than that - as well as the 14-day limit, the boat must be on a journey rather than remaining within a particular area. BW is using the judgement in the BW v Davies case of March 2011 to justify this, but this judgement is not a legal precedent - it was in a County Court and was not recorded in any formal law reports. BW has revised the *Mooring Guidance for Continuous Cruisers* since the judgement. It is now called *Guidance for Boaters Without a Home Mooring*, but is substantially the same as before.

All the boats that have been served with Pre-CC1, CC1 and CC2A/B letters are licensed and most of them move every 14 days. If you aren't licensed or you overstay persistently without good reasons, you are taking a risk because the law is very clear on these points. However BW does not often enforce the 14-day limit, preferring to try to enforce "Guidance" that is beyond what the law requires. We think this is a deliberate policy to pressurise boaters to take a mooring or move off the waterways. Before 1995 BW wanted to stop people cruising the canals without a mooring, but Parliament did not let them. BW's Guidance for Boaters Without a Home Mooring is on their web site www.britishwaterways.co.uk/mooringguidance

Deal with it in writing!

Always, always - if you discuss these letters, and/or patrol notices, with BW, do it in writing. Either by post or email, but that way both you and BW have a firm record of what was said. If BW takes the enforcement process further you may need to prove what you said or what BW said. If you have to discuss it by phone, follow up your phone call with a letter or email repeating what was said or agreed, and ask them to confirm in writing to you that your letter is a correct record of the conversation. If you get a letter that specifically asks you to reply, do so in writing.

Keep the letters and do something

However tempting, don't ignore the letters or use them to light the fire. If you don't keep a written record of your dealings with BW and theirs with you, they will take advantage of that, and you won't be able to use them to prove what was said later. If you ignore the letters, BW will escalate the process until they terminate your licence, serve a Section 8 and take you to court - unless they believe that your boat movements are complying with their Guidance.

Should I complain, comply, or both?

The safest way to deal with these letters is to comply with what BW is asking you to do as far as you can and also to make a formal complaint. If you can't or don't want to comply with the letter, the best way to deal with it is by making a formal complaint. Either way, if the letter specifically asks you to contact BW, we advise replying to the letter and making a separate, formal complaint.

Lengthening your cruising range either temporarily or permanently may well get you off the hook. This suggestion is based on previous experience and also from looking at BW's internal records

about themselves and their boat movements that individual boaters have obtained under the Data Protection Act. For example, in 2009 one boater was recorded as "not moving strictly in accordance with the Guidance, but over a distance of 24km so no longer suitable for enforcement by the CC procedure". Also in 2009 another boater was served a CC1 and a CC2A for being between Bath and Hilperton over a 5 month period, but 2 months later BW recorded that the boater was now moving in accordance with the Guidance having travelled to Bishops Cannings, and the enforcement notification was closed (ask BW for the SAP Notepad notes where these details are recorded). The boater travelled back to Bath 2 months after that and cruised between Bath and Semington for 15 months without any enforcement action.

Why me and why now?

BW's enforcement activity was centralised in 2009 and they are standardising their enforcement practice for boats without moorings across England and Wales. The boat checkers record boat locations every week or two, sometimes more often, and these records are looked at every few months. The boats that have moved the least are targeted. BW have said different things about what travelling distance prompts them to target boats. It may be boats that remain within a 1km length, or 3km, or 10 miles - we don't know and this may not be fixed. BW's decisions about where to focus enforcement time are also based on the number of boats without moorings and/or overstaying boats in a particular area. They prioritise and then work down the list.

Why complain and will BW victimise me for complaining?

It can seem like a lot of hassle to make a formal complaint. However, we believe that BW is doing something unlawful and the more boaters who complain, the harder it will be for BW to carry on threatening boaters with loss of our homes to pressurise us to move further than the law requires. As long as your complaint is in polite language, BW have no grounds for treating you differently. If they do, that gives you further grounds for complaint. In our experience, BW pick on those they think are weak and vulnerable, not those who fight back.

Is the letter or patrol notice factually correct?

If a letter or a patrol notice makes an allegation about your boat movements that is not correct, challenge this in writing by making a formal complaint. Your complaint will be more effective if you can provide evidence of your boat movements, such as receipts from a boatyard for services like pump out or repairs; dated photographs of your boat at recognisable locations, or a letter from someone who witnessed your boat in a particular place. Ask for the letter or patrol notice to be withdrawn and ask BW to record it as "created in error".

Patrol notices and similar in ice or snow

A boater went to BW's AGM on 13th October 2011 and extracted a promise from Simon Salem, BW's Marketing Director, to ensure that the enforcement team do not serve patrol notices for overstaying during ice or other severe weather conditions. If you get ticketed in severe weather, complain about it in writing quoting Mr Salem's promise!

Possible response to a Pre-CC1

BW do not require you to reply to a Pre-CC1 so you need not respond to that letter, but you can make a formal complaint using the BW complaints process. Your main points of complaint would be that your boat movements do comply with the law and you want BW to withdraw the letter.

Possible response to a CC1 or CC2A/B

It is best to reply to the CC1 and 2A/B direct to the person who sent it and also make a separate formal complaint. Both letters will however be much the same. See below.

Responding to CC3, LA4 and LA5

By this stage the process has become serious. You may need a lawyer. If you're eligible, you should get legal aid. We may be able to advise you further, depending on the situation. We recommend the solicitors at the Travellers Advice Team in Birmingham, 0121 685 8595. Giving back the licence disks might enable BW to take you to court quicker so it's best not to return them.

Who to complain to and how the complaints procedure works

The BW internal complaints procedure has two levels. If you are not satisfied with BW's response to your complaint at Level 1 or Local level, you can ask for the complaint to be considered again at Level 2 or Corporate level. When making a complaint, it is important to be clear about what you are complaining about and say what you want BW to do to rectify your complaint. Complaints can get quite complex so it helps to make a written record in date order of everything that happens and most importantly to keep all the letters and other documents. If you are not satisfied with the response at Level 2, you can take the complaint to the Waterways Ombudsman within 6 months of a Level 2 decision from BW. The Ombudsman won't deal with complaints until they have gone through the internal BW complaints process.

BW have to acknowledge your complaint and then respond to it within 15 working days at both Level 1 and Level 2.

If your complaint is about enforcement, send your Level 1 complaint to Denise Yelland, Head of Enforcement, British Waterways, 64 Clarendon Rd, Watford WD17 1DA. Email denise.yelland@britishwaterways.co.uk

Send Level 2 complaints to Kelly Radley, Internal Communications and Customer Services Manager, British Waterways, 64 Clarendon Rd, Watford WD17 1DA. Email kelly.radley@britishwaterways.co.uk or enquiries.hq@britishwaterways.co.uk

Contact the Waterways Ombudsman, PO Box 35, York YO60 6WW. Email enquiries@waterways-ombudsman.org; web site www.waterways-ombudsman.org

Example response to a CC1 or CC2A/B

I am writing in response to your letter of (date). The movements of my boat have always complied with British Waterways legal requirements and I intend to continue complying with these legal requirements. I have always travelled in compliance with Section 17 3 c ii of the British Waterways Act 1995. Your letter mentions the *Guidance for Boaters Without a Home Mooring*. This states quite clearly that it is guidance, that it is an interpretation of the law, and “does not have the force of law” (Note 2). Therefore, it is not a legal requirement and BW cannot enforce compliance with it. Section 17 3 c ii of the 1995 Act does not specify any particular cruising pattern or minimum distance a boat must travel.

Example complaint

The same as the letter of response but beginning with: I wish to complain about the Pre-CC1, CC1 or CC2A/B that was served on my boat (name and number) dated (date)

and ending with: Please withdraw this letter and amend your records to state that it was created in error.

Contact us

info@boatingcommunity.org.uk Tel 07928 078208
<http://kanda.boatingcommunity.org.uk>

November 2011