



**John Pinkerton
Canal Cruises**

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Submitted Question to JMC for meeting 30th November 2017


Commercial Navigation Licence Policy

Evidence

The current Commercial Navigation Licence policy for the Basingstoke Canal Authority includes the following terms and conditions for a Commercial Navigation Licence for craft operating on the Basingstoke Canal:

Basingstoke
Canal

 Hampshire
County Council
  Basingstoke
Canal Authority
  SURREY



Licence

7	Alienation:	<p>7.1 This Licence is personal to the Licensee and cannot be assigned, transferred, sublet or otherwise disposed of, except by surrender to the Licensor.</p> <p>7.2 The Licence does not give the Licensee any tenancy or legal interest in the Premises and the Licensee accepts that the Licensor retains control and possession of the Premises at all times.</p>
8	Insurance & Indemnification:	<p>8.1 The Licensee shall insure all boats, equipment and such other possessions used on the Premises against fire, theft and such other risks as it deems necessary.</p> <p>8.2 The Licensee shall maintain a Public Liability Insurance at all times with a reputable insurance company to the value of £10 Million per claim, and shall supply to the Licensor proof of the Policy if required.</p> <p>8.3 The Licensee shall indemnify and keep indemnified the Licensor against all actions, proceedings, costs, claims, demands or other losses arising directly or indirectly from the Licensee or its hirers' use of the Premises under the terms of this Licence.</p>

1. Clause 8.2 requires a Public Liability Insurance to the value of £10m per claim. This is in line with the Policy chosen by other canal authorities for their Commercial Navigation Licence requirements.
2. Under Clause 8.2, Insurers will expect **Proof of Negligence** by the Insured before payment is made.
3. Clause 8.3 is requiring **UNLIMITED INDEMNITY** for **ANY LOSS** by the Owners, and by definition, does not require **Proof of Negligence by the Operator**, nor require the **Operator to have Control** over the cause of the incident.
4. Enquiries made to Insurance Brokers confirm that Insurance cover for such a widely embracing indemnity is not available.
5. Enquiries made of CRT, Environment Agency, National Trust and other canal authorities show that there is no evidence that any of these operate a Policy to include a clause similar to 8.3 in their Commercial Navigation Licence. CRT Policy when IWA run events on CRT property is that Public Liability is limited only to insurable levels (£10m).
6. From the wording of Clause 8.3, any claim could be greatly in excess of £10m. It is noted that BCA Policy for public events with 1000+ attendees, run with their permission, requires only Public Liability insurance to a maximum of £10m (*ref BCA website*).
7. The Policy determining the current Licence document wording indicates it is adapted from a pre-existing Commercial Land / Property Tenancy agreement, tempered by Clause 7.2.

Conclusions

8. Items 3 - 6 indicate that by inserting Clause 8.3, the Policy is imposing unfair contractual terms on the Operator. (In practice, would it be enforceable in law?)
9. Item 7 indicates that the current Policy has created a document which is wholly inappropriate for an agreement which is intended to licence, by 'Permit', navigation of private waters. (Policies for other activities have similar situations, for example horse-riders purchase 'Permits' to ride specific routes over privately owned land, typically Forestry Commission.)

Questions

10. How do Officers justify the current Commercial Navigation Licence policy, and the inclusion of Clause 8.3?
11. On which date did the members of the Basingstoke Canal Joint Management Committee approve the current policy for the Commercial Navigation Licence?

Dick King
Chairman JPCC
20 November 2017

RESPONSE:

Under the Memo of Agreement [MoA] for the Canal partnership the Basingstoke Canal Authority operate the entire Canal under the policies and procedures of Hampshire County Council. The most recent MoA was agreed by this Committee in February 2014 – this delegated authority to grant boat licences to the Strategic Manager and Canal Manager.

It would not be the normal role of the Committee to draft the individual terms in a specific legal document. Therefore in accordance with Hampshire County Council's usual policies and procedures advice was sought from Hampshire County Council Estates and Legal professionals in the preparing of boat licences for commercial and quasi-commercial businesses. The licence resulting from this advice included a relatively standard clause requiring licensees to indemnify the Council as a consequence of their activity.

Following a discussion with the Canal Society Chairman, Philip Riley earlier in the year, the Strategic Manager queried the inclusion of clauses in the draft licence for the John Pinkerton to require both insurance cover of £10m, and an open ended liability to indemnify the Council.

Officers are pleased to say that Hampshire County Council Legal Service have now reconsidered the matter and have offered revised advise that the indemnity clause should match and reflect the £10m insurance liability. The Strategic Manager in consultation with Estates professionals will offer revised licences to the boating businesses affected by this change in Legal advice.

Mike Goodman
Chairman of the Basingstoke Canal Joint Management Committee

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