

**Sustainability Committee**

**National Assembly for Wales.**

**Examination of the current position for access to inland water in Wales.**

Contribution from Mr Chris Bolton

**What is your interest in the issue of access to inland waterways**

Waterborne recreation (particularly canoeing and kayaking) - but I seek fair use for all sports (including angling, even though I have objections to it as a sport).

**Are you a member of an organisation related to your use of water?**

Yes

**If yes, which organisation/s?**

British Canoe Union / Canoe England

**Which stretch/es of water do you own/use/manage?**

*Own:* None. I'm not sure that it's possible to own water, (as distinct from the right to use it for a defined purpose)

*Use:* Any, except where there are reasons not to, such as environmental reasons, clear legal reasons, or threats of violence and intimidation (see later discussion).

**Legal rights**

**Are you happy that your legal rights are clear and well defined?**

No

**Can you briefly outline your understanding of your legal rights over the stretch of water/s that you own/use/manage**

I believe that the Magna Carta, common law and (at least for which rivers flow through Wales and England, the Congress of Vienna) allows a right of passage along many rivers. *Interpretations* of the law published in the last two centuries, which may well be unfounded, have given the impression that this right may not exist. These interpretations were individual opinions, not case law, but have resulted in a belief that other rights (such as fishing rights) are de facto ownership and include the right to exclude other activity. See submission by the Rev. Douglas Caffyn.

**Would you like to see any changes to your legal rights?**

Yes

**If yes, what changes would you like to see?**

I would like to see the same rights as in Scotland

**Are you aware of any legislation that exists in other countries that could be used in Wales?**

The Scottish Land Reform Act is a brilliant piece of legislation which allows fair and reasonable use of natural national heritage, while protecting the rights of individuals to the privacy of their homes, and those who earn a living from the land. It make provision for resolution of conflict between different users.

There are similar rights in Scandinavia. These are generally equivalent to “common law” but were formally include in legislation in Sweden in 1994 as the *Allemansrätt*.

**Voluntary agreements**

**Do you have any experience of voluntary agreements for access to the stretch of water/s you own/use/manage**

Very limited.

**If yes, please briefly outline the agreements that exist and your experience of how they operate.**

Almost all the access agreements I have experience of have been extremely limited, and have served only squeeze canoes and kayaks into a few rivers on a few dates, resulting in overcrowding - such as used to occur on the Dee/Dyfrdwy at Llangollen. They have been difficult to enforce, for the reasons discussed below.

I have some experience of “de facto” agreements, such as used to exist on rivers round Manchester, when the water was too polluted for game fish. There were no formal access agreements, but there were no objections to canoeing. On the Mersey, one of the “voluntary agreements” claimed as a success by the Environment Agency has replaced such a de facto agreement, ie, there has been no net benefit to canoeists.

Agreements are equivalent to contracts. Firstly, for a valid contract, there needs to be some “consideration” or valuable quantity, which is exchanged. Given the lack of clarity regarding the right of access, the agreements attempted to date have been one sided. Secondly, a contract is only binding on those who are party to it, and there is currently no mechanism by which canoeists in general can be bound into a voluntary contract.

**Would you like to see any changes to the voluntary agreements?  
If yes, what changes would you like to see?**

If the legal situation in Scotland were replicated in Wales, there would be scope (under the Code of Conduct which is part of that legislation) for mutually beneficial agreements between different sports. This might cover, for example, an agreement not to canoe when an angling competition was in progress, in exchange for not fishing during a canoe competition.

**Are you aware of any voluntary arrangements in other countries that could be used in Wales?**

No

**Please can you briefly outline what you think are the key issues for recreational access to inland water in Wales and how you would like to see them addressed.**

The key issue is the current lack of clarity and the differing perception of rights. I would like to see them addressed in the same way they have been in Scotland.

The belief among some people that specific rights such as the right to fish are effectively equivalent to ownership can lead to those people using threats, intimidation and sometime actual violence to enforce what they believe to be their rights. Although only a minority of people behave in this way, I do not enjoy conflict, and having encountered such behaviour while canoeing in Wales (and England), I have tended to go elsewhere to canoe, such as Scotland, France, or on the sea.

Many canoeists have taken the view that they believe they have a right of access and will take it. I have not done so as I don't want my recreation time to be stressed by the possibility of conflict, and I think the same may apply to many youth groups and families. The genie, however, is out of the bottle, and it will be very difficult to go back to the situation 10 years ago when a majority of canoeists (although not all) accepted constraints into limited areas and times.

Before the passage of the (Scottish) Land Reform Act, the situation in Scotland was similar to that in England and Wales. It is remarkable that since the Act came into force, and the right of passage became clear, such conflict has disappeared. It is almost as if, once people realised they did not have the right to exclude other users, their presence ceased to be an annoyance.

On the other hand, canoeists have now become accustomed to attempts to restrict their access, often on spurious environmental grounds. As a result, some are unable to identify genuine environmental concerns and take the view "they can't stop me paddling". If a general right of access existed, and genuinely environmentally sensitive times/areas were identified, I believe canoeists and kayakers would respect them.

Another difficulty is the question of payment. I am happy to pay for services provided, and in fact make a point of using and paying for local facilities such as car parks. There is a view that anglers pay for the right to fish so canoeists should pay for the right to canoe. In fact, the anglers pay to support the fisheries, which is also subsidised (to a greater amount) by taxes. Most canoeists and kayakers pay tax, and are in effect paying for the fisheries - while canoeists only seek to use the natural river. Facilities such as portages for weirs are useful, but are only needed because the natural river has been changed. I would be prepared to pay for provision of access down the bank to the water where natural access is either not available or is liable to cause environmental damage.

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