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## **LAF BRIEFING NOTE: RIVER ACCESS - CANOEISTS**

### **THE ISSUE**

A key concern of CLA members, in particular those with fishing interests is the BCU campaign for a 'Right to Row' for canoeists and other non motorised craft on rivers in England and Wales. In both England and Wales primary legislation is required to increase navigation rights, as there is currently no ability to extend a CROW type approach to inland waters or the bank sides.

### **THE LEGAL CONTEXT**

Under English law all land, including the bed of a river or lake, belongs to someone e.g. private individual, local authority. It is usually necessary to obtain permission for access to such land or water for fishing or canoeing. If this has not been obtained, access constitutes a legal trespass, whether or not the owner actively enforces his rights.

There is no ownership of the flowing water and all may reasonably use it, provided that they have both a right of access to it and a right to use it for their permitted purpose. Where such rights do not exist, the water may be used for angling, canoeing, swimming, and so on, only with the consent of the owner e.g. fishing licence or an access agreement for canoeing.

Recently the Rev.d Caffyn has been promoting (along with the BCU) his view that there is a right of navigation on

rivers, this would include motorised boats, through his paper "*The Right of Navigation on Non-tidal Rivers and the Common Law*". The CLA legal department has examined the paper in detail and commented as follows:

*"The Rev. Caffyn, whilst having made a painstaking review of the historical legal texts and judgments on the issue of whether there is a public right of navigation on non-tidal rivers, has produced a work with a very distinct slant to it. It is as if he has decided on his conclusion first, and then worked back from that point to find any material he can muster to support that conclusion. In doing that he has tended to either ignore or brush over any evidence which is not helpful to his case.*

*In the case of England and Wales the Crown owns the bed of a river up to the limit of the tidal reach. Beyond this point the bed of a river is in private hands, sometimes as a separate legal tract (say where it is owned by a fishing club) but more usually by the adjoining landowners each owning to mid-stream. Those landowners are free to decide to what use to put their part of a river unless there exists a public right of navigation created by immemorial user, an express grant or statutory authority such as a Navigation Act. There is clear legal authority in support of this approach culminating in the ruling of the House of Lords in *The Attorney-General ex rel. Yorkshire Trust v Brotherton* [1991].*

*Whether or not there has been mis-interpretation of ancient authorities that is where the law currently stands on the matter”.*

### **THE BACKGROUND TO THE DEBATE**

Access for canoeist was left out of the Countryside and Rights of Way Act 2000, but in order to establish the facts various government agencies paid the University of Brighton to research and publish “Water- Based Sport and Recreation the facts” (Brighton 1) which established

*“Water-based sport and recreation activities are undertaken by a small minority of the population. However many of these activities are, or have the potential to be, socially inclusive and, with a latent demand for these activities is currently low. However, if information about the activities were made more accessible, and a more comprehensive and inclusive approach taken to facility development and management, the demand for some activities, particularly sports where national participation appears to be growing (e.g. canoeing and rowing), could be stimulated. Furthermore, good quality water spaces have an amenity value for non-participants in water-based sport and recreation.”*

The BCU (British Canoeing Union) is leading a campaign for access to all non navigable rivers in England and Wales. The BCU headline campaign facts are:

- that 98% of rivers are excluded from the public;
- 2 million people canoe regularly;
- Access agreements have so far increased 812 km of canoeing only.
- Canoeing is a physical active sport which has no impact on the environment.

As a result of a letter writing campaign by BCU member’s Alun Michael wrote (01/09/2004) to the Local Access Forums and stated:

*“I am also aware from the many letters that I have received from Members of Parliament on behalf of*

*canoeists that access to water is an issue, and we need to give further consideration to the role of forums in advising on wider forms of access, including access to water. Some of you may already have dealt with this issue in your area and I would welcome specific views and experience on this issue.”*

The supply of inland water spaces for paddling according to government research is:

- 7% of the enclosed waters in England and Wales of 1 hectare or more in size.
- Paddling occurs on 4,400km of canals and inland rivers subject to public rights of navigation or to which access is permitted by licence (generally canals).
- Elsewhere formal access agreements cover 686km of the major rivers in England without a public right of navigation.
- In total this equates to 34% of the major river and canal network. In addition it must also be remembered that the canoeists already have access to 4,400 kilometres of coast line in England and Wales.

After the publication of Brighton 1 report The Countryside Agency who were leading on this issue, commissioned a Brighton 2 report, “Improving Access for Canoeing on Inland Waters: A Study of the Feasibility of Access Agreements” which was the first part of 3 year investigation into the feasibility of increasing access to water for canoeists by voluntary agreement.

Phase 1 of the investigation showed that it is possible to provide some additional access for canoeing by voluntary agreement. However, for this to happen there needs to be, a strategic framework; a motivated access champion; a source of funding for both capital works and revenue costs; and a source of technical support to advise all the stakeholders on reaching a potential agreement.

The Brighton 2 report estimated that about 100,000 people in England canoe regularly, with another 1 to 2 million

doing so occasionally. There is a similar level of occasional participation in angling, although with about 1 million rod licences sold per year, regular participation is considerably higher than for canoeing.

The Countryside Agency recommended to the Minister that the study should proceed to phase 2 (identifying funds and completing the access agreements in each of the study areas), subject to cost benefit analysis on the Mersey where the capital costs for essential works are high. The Countryside Agency recommended that the work on voluntary access for canoeists is undertaken by the Environment Agency who has technical expertise in the practical aspects of the agreements.

The Environment Agency was therefore asked in 2004 by the Minister to seek to secure access agreements on four rivers in England. The project was taken forward by Brighton University who were asked to:

- Test and demonstrate the processes involved in negotiating voluntary agreements for access to new lengths of water on all four pilot rivers:
- Develop a 'toolkit' to support the negotiation of more agreements in the future.
- Determine the reasons in cases when negotiation is difficult or fails, and whether there are ways of overcoming these issues in the future.

Subsequent to the instigation of the four pilot projects, Defra and the EA announced that they would like to see a strategic approach to the development of canoeing whereby, the assessment of need of the canoeists in an area are balanced against the other competing interests on a watercourse, fishing, conservation etc.

This has been highlighted by the launch at the Outdoor Show end of March 2006 of the Environment Agency's 'A Better Place To Play' – their strategy for water related sport and recreation (2006-2011) which

advocates a strategic approach to the provision of recreation rather than a blanket statutory approach clearly stating:

*'we will promote increased access where it does not adversely impact upon existing use and users, or the economic and conservation value of the site and associated area. We will encourage access where managed solutions can be found to remove adverse impacts, resource allowing.'*

On the 14<sup>th</sup> November 2005 when addressing a Local Access Forum Jim Knight was asked the following question:

***How far does the Government wish to go with opening access to woodland and waterways?***

*Both Woodland and waterways can provide additional and attractive access opportunities. However, when the statutory right of access was introduced under the CROW Act, we decided that this was not a sensible way to extend access to woodland and waterways. I am keen to see access extended to both types of land in other ways.*

*In particular, section 16 of the CROW Act enables landowners to voluntarily dedicate land for public access. This land then becomes access land and the same rules apply as for mapped access. A dedication cannot be revoked – the land remains access land in perpetuity or, where applicable, for the duration of a long lease.*

*It is still early days but dedication is already making a difference. For example the FC has dedicated 129,000 hectares of woodland and a private landowner has followed suite with three woods in Shropshire (totalling 68 hectares). The EA is also using dedication as a way to improve access to water: on the River Mersey they have helped 4 golf clubs to dedicate 6.5 km of river for use by canoeists.*

## **CURRENT SITUATION**

On the 3<sup>rd</sup> October 2006, the Environment Agency presented the report 'Putting Voluntary Canoe Access Agreements in Place' to Richard Caborn Minister of Sport, and Barry Gardiner Defra Minister at Bungay Suffolk.

## **HEADLINE POINTS**

- 99% of land or riparian owners are willing to consider canoe access.
- 100% success in securing voluntary canoeing arrangements on section of the four pilot projects Mersey, Teme, Waverney and Wear.
- 70km of canoeing achieved on the four pilot rivers.
- A national approach for achieving canoe access agreements needs to be combined with successful negotiations at a local level.- the success of this project shows that voluntary access can be delivered on a scale not previously considered.

## **KEY FINDINGS**

1. Voluntary agreements work
2. Many previous attempts to negotiate agreements have floundered through a lack of clear processes, resources, strategic support and guidance.
3. Riparian owners have the opportunity to tailor agreements to their individual requirements and concerns. Together with local stakeholders, they can also develop specific terms and conditions to ensure that access is sustainable and compatible with other uses.
4. Canoeists hold the key to developing and sustaining agreements.
5. Anglers are concerned about equality as much as exclusivity
6. Canoe agreements can be negotiated but require local approaches informed by an appropriate 'toolkit' of resources

7. Local, regional and national government bodies and agencies have an important role to play in supporting the development and implementation of canoe access agreements
8. Dedication of access land under the Countryside and Rights of Way Act 2000 offers a new opportunity to provide canoe access.
9. Voluntary approaches cannot secure access in all circumstances.

## **ENVIRONMENT AGENCY CONCLUSION**

*"As well as guiding the actions of the voluntary groups and local stakeholders seeking access, the research has demonstrated the need to support these efforts locally, regionally and nationally. This can be done by developing;*

- *A 'toolkit' of techniques for negotiating and securing access;*
- *Suitable supplementary planning guidance;*
- *Grant support;*
- *Other strategic initiatives*

*The wider application and development of voluntary arrangements is the most appropriate way forward to secure greater opportunities for sustainable and responsible access to inland waters. However more positive involvement and activity on the part of many different organizations is needed, including the canoeists themselves. We also need greater incentives and more justification for a wider group of organizations to help support the provision of new access arrangements.*

*The strategic planning of water-related sport and recreation at a regional level should make it easier to identify;*

- *the opportunities and priorities for developing access;*
- *Possible funding opportunities to assist in providing and managing voluntary agreements.*

## **NEXT STEPS**

Based upon the experiences across the pilot rivers the Environment Agency has produced a toolkit giving advice and information on voluntary access agreements, including: -

- Basic access rights as they now stand;
- What sort of voluntary agreements can be put in place with landowners;
- How to find out who owns the land and water;
- How to approach different owners;
- Codes of conduct;
- Risk assessments;
- Details of other organisations which can help

The on-line Voluntary Canoe Access Agreements Toolkit which includes details of funding opportunities, plus data on social and economic benefits of canoeing is available on the Environment Agency web site.

The Environment Agency proposes to take the project forward through the strategic planning process in their South West and Anglian Regions, the aim of which will be to create a plan that shows where new opportunities can be created and identify the social and economic benefits these can bring and negotiate any additional access through voluntary arrangements.

The issue is also being considered in Wales and the CLA current understanding is that there will be a similar approach taken.

## **CLA POSITION**

Increase access for canoeists (non motorised craft) needs to be assessed in the light of the competing demands on the watercourse resource. Therefore a strategic approach needs to be taken, where the impact of the competing interests can be assessed and adequate provision made for canoeists based on actual need at a local level.

Any additional access should be undertaken through voluntary agreement

with payment to the riparian owner either through the voluntary agreement. Future revision of the HLS scheme should consider the potential to fund access to and on water for non motorised boats.

Whilst local authorities have no statutory duty or powers to increase access for canoeists, LAFs and local authorities have role to play in engaging and supporting the Environment Agency voluntary initiative e.g. the ROWIP could examine whether there is adequate public rights of way provision to areas where canoeing is allowed.

## **CLA COMMENT**

The CLA supports the Environment Agency's (EA) announcement (3<sup>rd</sup> Oct 2006) of voluntary access agreements as the way forward for providing access for canoeing,

"Partnerships between local people, landowners and organizations will achieve the kind of access that everyone wants and needs. The pilot project for voluntary canoe access on the River Mersey, Teme, Waverney and Wear has delivered 70km of access, which shows just what can be achieved when different interests work together," says David Fursdon CLA President. "We are delighted that the EA has concluded that voluntary access to rivers is the best way forward. The results from the pilot study also show that a blanket approach to access is unnecessary."

"Many different interests have to be considered if, as the Environment Agency plans, rivers can be used for the social and economic well-being of all. We want to encourage everyone to get out and enjoy the countryside, but obviously the rights of riparian owners have also to be considered."

"We are keen to see how the voluntary agreements will work in practice as we're hopeful that an approach like this could be used for other access initiatives instead of legislation. This is the first step to successful, usable access across the country and we will of course be promoting this to our members to show our support."

## **MAIN DOCUMENTS**

Research Published on Impact of Canoeing on Angling & Fishing Stocks  
W226 Environment Agency November 2000

Agreeing Access to Water for Canoeing  
Environment Agency – July 1999

Water-Based Sport and Recreation the facts – University of Brighton (Brighton 1)  
DEFRA, British Waterways, Countryside Agency, Countryside Council for Wales, Environment Agency and Sport England.  
<http://www.defra.gov.uk/wildlife-countryside/resprog/findings/watersport.pdf#search=%22water%20based%20sport%20and%20recreation%20the%20facts%22>

Improving Access for Canoeing on Inland Waters: A Study of the Feasibility of Access Agreements (Brighton 2)  
Countryside Agency – March 2004

DEFRA Letter from Alun Michael to LAF dated 1<sup>st</sup> September 2004

The Countryside in around towns Groundwork, Countryside Agency – Jan 2005  
[http://www.countryside.gov.uk/Images/CAT\\_tcm2-22089.pdf](http://www.countryside.gov.uk/Images/CAT_tcm2-22089.pdf)

Our Strategy for Water-Related Sport and Recreation (2006-2011)  
Environment Agency  
[http://www.environment-agency.gov.uk/commondata/acrobat/final\\_english\\_strat\\_1325406.pdf#search=%22water%20related%20sport%20and%20recreation%22](http://www.environment-agency.gov.uk/commondata/acrobat/final_english_strat_1325406.pdf#search=%22water%20related%20sport%20and%20recreation%22)

Putting Pilot Voluntary Canoe Access Agreements in Place – Summary Report  
Environment Agency

Summary  
[http://www.environment-agency.gov.uk/commondata/acrobat/final\\_artwork\\_1484219.pdf](http://www.environment-agency.gov.uk/commondata/acrobat/final_artwork_1484219.pdf)

Full report  
<http://www.brighton.ac.uk/chelsea/newsevents/canoereport.pdf>

## **USEFUL WEB SITES**

CLA Website  
[http://www.cla.org.uk/Hot\\_Topics/River\\_Access\\_for\\_Canoeists/?InkCk=ART\\_CONT ENT\\_1&statID=588043](http://www.cla.org.uk/Hot_Topics/River_Access_for_Canoeists/?InkCk=ART_CONT ENT_1&statID=588043)

Environment Agency Website  
<http://www.environment-agency.gov.uk/subjects/recreation/345720/1467794/>

BCU Access campaign Web Site  
<http://www.riversaccess.org/>

BCU Wales Web Site:  
[http://www.welsh-canoeing.org.uk/access/rights\\_and\\_agreements.htm](http://www.welsh-canoeing.org.uk/access/rights_and_agreements.htm)

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