

British Canoeing & Canoe Wales: Position Statement on the Shared Use of Rivers

Background to the legal position of inland navigation in England and Wales

In contrast to most countries, including Scotland, canoeists in England and Wales face a lack of clarity in their rights of access to and along rivers. Only 4%ⁱ of non-tidal riversⁱⁱ in England and Wales hold uncontested Public Rights of Navigation (PRN). Most of these waterways are managed/regulated by a Navigation Authority (e.g. the Environment Agency for rivers such as the Thames, Wye and Lugg).

The overwhelming majority of other rivers are unregulated, and as such do not have an active navigation authority. The existence of a PRN on these unregulated rivers is often challenged, with some believing these waters are private and claim the presence of canoes represents an act of trespass.ⁱⁱⁱ British Canoeing & Canoe Wales do not subscribe to this assumption that these rivers have private navigation rights.

Since the 1980s a large body of research has been amassed which indicates that there is:

- A PRN on many more stretches of river than is currently accepted^{iv}; and
- A Universal PRN on all physically navigable rivers^v.

This legal and historical research is backed by a leading QC (with expertise in Rights of Way and public access legislation) and supported by the work of a variety of researchers and academics.

The lack of clarity regarding navigation laws has been recognised over the past 50 years by: the House of Lords in the 1970^{vi}; government ministers throughout the 2000s^{vii}; and by both DEFRA and the Welsh Assembly Government over the past decade^{viii}. Most recently, Andrea Leadsom, Secretary of State for the Environment, Food and Rural Affairs stated: *"...the law regarding rights of navigation on unregulated waters is unclear. However, we do not consider it is for the Government to clarify the law in this area nor to interfere in individual disputes, which we believe are best resolved locally."*^{ix}

British Canoeing & Canoe Wales believe there is a strong case for the existence of public rights to allow responsible and sustainable recreational use of all physically navigable rivers. Others dispute this. Therefore the law can only be considered to be unclear, a situation recognised by the governments in both England and Wales. We believe this situation demonstrates the need for all users^x to work together. The issue of access to and along water should not be seen to be polarising a debate between canoeing and angling but a matter of wider public interest, developing a fair and inclusive approach to facilitate Shared Use of our rivers.

Access Arrangements

Over the past 50 years there have been a range of initiatives attempting to manage the use of our rivers for different activities. These have been variously badged as Voluntary Access Agreements (VAAs); Access Agreements (AA); and Access Arrangements (also AA).

Although there are isolated examples of successful arrangements (e.g. River Greta), there is a considerable lack of confidence in the canoeing community about them, with concerns such as:

- too often attempts to develop an AA simply fail completely;
- a lack of involvement of canoeists in the process;
- the notion that canoeing is only possible 'with permission';
- they are overly restrictive on canoeing, with no restrictions on other activities; and
- they are insecure, confer no rights, and can be terminated without notice or consultation.

Overall, AAs are few in number and have failed to meet an unmet demand for access. The situation was highlighted in a Government-sponsored project, which was unsuccessful negotiating a suitable AA on the River Wear, illustrating the issues outlined above in developing a successful AA.^{xi}

Working towards *Shared Use* on our Waters

The lack of clarity in the law and unbalanced approach to developing Access Arrangements has led to difficult and conflicting relationships on our rivers between user groups, landowners and other interests. We believe that putting the law aside and working to develop partnerships between user groups can reduce the potential for disagreement, bringing benefits to all. Most rivers can be effectively shared between users with little need for intervention, as demonstrated by the Scottish model. However, on *some* waters partnership working will be needed, and here a process which develops mutual respect between users to agree Shared Use is vital.

The process of developing true Shared Use of our waters can be achieved through:

- Increased use of local partnerships to work towards Shared Use arrangements; and
- A Code of Conduct for **all** user groups

In order for canoeists to feel able to engage, we believe the following guidelines for developing Shared Use should be followed:

- **Inclusive Approach** – All users should be fully included in any partnership to develop Shared Use. Excluding any user or giving them less than equal representation only serves to alienate, resulting in working relationships becoming untenable.
- **Least Restrictive Possible** – This principle is used across many outdoor activities, seeking to ensure that restrictions on use are kept to the minimum possible to ensure: environmental protection; effective land management; and managing conflict between users.
- **Fair to all** – Even where restrictions are in conjunction with the *Least Restrictive Possible* approach, they must be shown to be fair to all. Restrictions should not only fall on one user group or interest, instead being balanced between them. All users must feel engaged in this process and have the ability to influence the outcomes.
- **Evidence-Based Approach** – Where restrictions (e.g. minimum water levels for environmental protection) are based on sound evidence, with an inclusive approach, users have shown themselves to be happy to work within them. However, where such restrictions are not supported by evidence they are liable to be seen as unwarranted, leading people to disengage. Precautionary restrictions can be important, especially in environmental protection – but again, evidence of the need to consider these along with effective engagement will help all feel confident in the process.
- **Without Prejudice** – Any partnership, and the arrangements that stem from them, should be without prejudice to any view of the law. It is vital that such disagreements are left aside, to encourage all to engage and to work towards mutual solutions.
- **Voluntary** – Any arrangements resulting from Shared Use Partnerships should be seen as part of a voluntary partnership between users. No user or organisation has the ability to ‘police’ any agreements. Instead, through the effective engagement process outlined, voluntary arrangements that are seen as fair would encourage all to respect them.
- **Code of Conduct** – An effective partnership would seek to utilise national guidance for user groups, landowners and land managers, helping embed positive messages regarding ways to respect and share the space with all (see below).
- **Monitoring & Review** – Enabling an ongoing review process, enabling flexibility in the partnership to react to both opportunities and challenges.

Code(s) of Conduct

In Scotland, the law regarding public access across land and water is much clearer than in England and Wales. In 2003 statutory access rights and responsibilities were introduced via the Land Reform (Scotland) Act 2003, giving statutory access rights to inland water. However, people only have these rights if they exercise them with respect for other users, privacy, safety, livelihoods and the environment. The Scottish Outdoor Access Code was introduced, providing guidance for those exercising access rights and those managing the land and water. By doing so, the Code helps everyone make informed decisions about behaviour, respect and sustainable use of land and water.

British Canoeing & Canoe Wales have produced their own version of a Code for paddlers in England and Wales through our two 'You and Your Canoe' documents^{xii}, but there are also a number of alternative Codes in existence.^{xiii} This varied mix of Codes of Conduct can be confusing for user groups. We believe that development of a more coherent national code would help all user groups to learn more about how they can work together to share and protect our rivers – and help facilitate the fair Shared Use partnerships outlined above.

We are happy to work with any organisation to share details of any proposed code for our respective audiences. An outline of our proposed code for canoeists is:

1. Respect the interests of other users on the water by:
 - Working with anglers, whether bank-based or wading, by stopping where possible upstream, and waiting for an indication of how and where to pass.
 - Be aware of rowers, who may have limited forward visibility.
 - While swimmers may be using floats and/or safety boats, some may not, and could be hard to spot. Keep a close eye on the water ahead and be aware they have limited ability to divert around you, so attempt to move out of their way safely.
 - On managed navigations (such as canals) where motor boats may be present navigate to the right hand bank of the river.
2. Respect other users, and others, when accessing water by:
 - Getting changed discreetly.
 - Parking with respect for other users.
 - Using only authorised access points.
3. Help protect the environment by:
 - Checking rivers before paddling (whether by inspection or using sites such as Rainchasers^{xiv} or the Environment Agency/ Natural Resources Wales river gauge sites^{xv}) to ensure they have enough water height to ensure sustainability.
 - Following the Check, Clean, Dry guidance to help prevent the spread on invasive non-native species.^{xvi}
 - Keeping a respectful distance from wildlife and bank-side habitats.^{xvii}
 - Reporting any environmental hazards or issues you see.^{xviii}

Further information regarding our position regarding access to and along inland waters, together with more detailed information on the background to canoe access on our rivers can be found at:

- www.britishcanoeing.org.uk/guidance-resources/waterways-environment/access, or by contacting us at access@britishcanoeing.org.uk; or
- <http://www.canoewales.com/paddling>, or by contacting us at environment-officer@canoe.wales

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Footnotes

ⁱ See www.britishcanoeing.org.uk/guidance-resources/waterways-environment/access

ⁱⁱ On tidal waters the position is much clearer, with a widely recognised PRN on all waters to their *natural* tidal limit.

ⁱⁱⁱ See for example The Angling Trust Position Statement

(http://www.anglingtrust.net/core/core_picker/download.asp?documenttable=libraryfiles&id=394) and the CLA

[http://www.assembly.wales/NAfW%20Documents/canoe access to rivers right to row laf guidance note cb 101006.pdf](http://www.assembly.wales/NAfW%20Documents/canoe%20access%20to%20rivers%20right%20to%20row%20laf%20guidance%20note%20cb%20101006.pdf)

^{iv} See for example Telling & Smith (1985) – The Public Right of Navigation; A report to the Sports Council (ISBN 0-906577-49-7) or Edwards (1987) - THE TRANSPORT SYSTEM OF MEDIEVAL ENGLAND AND WALES - A GEOGRAPHICAL SYNTHESIS, University of Salford. Both available from British Canoeing on request

^v Most notably research conducted by Dr Doug Caffyn, which can be accessed at <http://www.caffynonrivers.co.uk/>

^{vi} "The legal question of rights of way over water must be settled. A number of different legal interpretations of this right of way have been referred to in evidence and it is time for these to be resolved." *The Select Committee of the House of Lords on Sport and Leisure, 1973* (quoted in http://www.caffynonrivers.co.uk/resources/cms/pdf/boats_on_our_rivers_again.pdf)

^{vii} "They [*the Countryside Agency, Environment Agency, Forestry Commission and English Nature*] concluded that the evidence available about the legal position with regard to access to inland water was both complex and incomplete, and thus inappropriate for inclusion in CRoW." DEFRA 19th May 2011

^{viii} "No clear case law on whether a 'common law right of navigation' exists on unregulated rivers." DEFRA, 2013

^{ix} In reply to Ken Clarke MP, who raised a question on behalf of a constituent, October 2016.

^x Users are defined as all those with an interest in the river and water-side environment, including land owners, conservationists, statutory bodies and recreational user groups.

^{xi} University of Brighton (2004) *Improving Access for Canoeing on Inland Waters – A study of the Feasibility of Access Arrangements*

^{xii} Both can be downloaded from: <https://www.britishcanoeing.org.uk/guidance-resources/waterways-environment/environmental-good-practice/>

^{xiii} For example see:

- Natural Resources Wales promotes codes for canoeing, angling, swimming and others - <https://naturalresources.wales/out-and-about/planning-your-visit/the-countryside-codes/?lang=en>
- Welsh Dee Partnership Ltd – http://www.welshdeepartnershipltd.co.uk/code_of_conduct
- Leave no Trace - <http://www.lnt.org/>
- Perfect Paddling – Canoeist Guide to Paddling the River Wye [http://www.wyedeantourism.co.uk/system-images/files/Perfect Paddling Canoeists Guide to Paddling the River Wye.pdf](http://www.wyedeantourism.co.uk/system-images/files/Perfect_Paddling_Canoeists_Guide_to_Paddling_the_River_Wye.pdf)
- Angling Trust – Code of Conduct for Coarse Anglers 2010
- Using Inland Water Responsibly: Guidance for all water users - http://www.outdooraccess-scotland.com/sites/default/files/docs/on_water_hand_signals_for_anglers_and_kayakers.pdf
- SCA Paddlers' Access Code - Access Advice for Paddlers in Scotland http://www.outdooraccess-scotland.com/sites/default/files/docs/paddlers_access_code.pdf

^{xiv} <http://rainchasers.com/river-levels>

^{xv} <http://www.gaugemap.co.uk/> and <http://www.naturalresources.wales/river-levels-online?lang=en>

^{xvi} <https://www.britishcanoeing.org.uk/guidance-resources/waterways-environment/environmental-good-practice/stop-the-spread/>

^{xvii} For more information see our You, Your Canoe and the Environment document

^{xviii} <https://www.britishcanoeing.org.uk/guidance-resources/waterways-environment/environmental-good-practice/>