

# Conflict on the Riverbank

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*A dossier of evidence documenting the rise of unlawful canoeing, the role of the UK's Canoeing Governing Bodies in blocking the England & Wales Governments' policy of Voluntary Access Agreements and the impact on fisheries, anglers, angling clubs and riparian owners.*



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# 1. Introduction - Canoeing and Voluntary Access Agreements

The Angling Trust and other angling and fisheries organisations have prepared this dossier for Government Ministers and funding agencies to highlight the problems that are being created by the conflicting approach of the British Canoe Union, Canoe England and Canoe Wales towards voluntary access agreements, which allow the peaceful and non-confrontational shared use of rivers. Since 2006 there has been an aggressive 'Right to Paddle' campaign for universal access (at all times and to all rivers) promoted by canoeing organisations and funded by Canoe England. There have been several organised trespass events, resulting in conflicts with other lawful river users, and, on occasion, the involvement of the police.

Both the law and government policy are clear. There is no automatic public right of navigation in non-tidal waters. Successive governments have made clear that canoeists and their organisations should abide by the law and pursue access through voluntary agreements with riparian owners and other water users that respect local requirements.

*"Defra's policy remains that all 2,000 miles of navigable canals and rivers entrusted to the Canal & River Trust are open to recreational users such as canoeists and that those wishing to use other waterways can work with the landowner to agree access."* Defra letter- Feb 2013 (See Appendix L)

*"While we want more people to get out and enjoy activities in the countryside they must be complimentary. There are plenty of places to canoe where it is appropriate and others where it is not. There will be no change to our policy of supporting voluntary access agreements as the only way forward. Anglers and fishery owners spend a lot of time and money caring for our rivers and streams and their rights deserve to be respected."* Richard Benyon MP, Fisheries and Natural Environment Minister, Dec 2012

These agreements have operated successfully in many areas until the past few years when the BCU, CE and CW began a policy of ordering their local staff to withdraw from agreements that did not give canoeists unfettered access in order to try and undermine the principle of agreed voluntary access. The Angling Trust has copies of confidential correspondence from several local staff that confirms this policy (see Appendix J for an example from the River Axe).

This dossier provides a number of case studies, particularly from the South West, which we believe demonstrate that the government's policy of voluntary access agreements can and does work, as long as those agreements are not undermined or rejected by campaigning canoeists, including in some instances by officials at the National Governing Body (the BCU and its divisions, CE and CW). It shows clearly the impact that unlawful canoeing is having on anglers' lawful right to fish their local rivers. It highlights canoeing websites such as [www.ukriversguidebook.co.uk](http://www.ukriversguidebook.co.uk) which appear actively to encourage trespass and gives clear examples of where CE and the BCU are refusing to enter into agreements (see Appendix G).

The dossier will also report the experience of anglers, that the BCU, CE and CW are causing confusion among paddlers and the public by refusing to acknowledge the clearly-established law regarding navigation on non-tidal rivers where there is no public right of navigation. The situation is getting worse every year with an increasing number of conflicts occurring between anglers who have paid for the right to enjoy peaceful fishing on non-navigable rivers, and canoeists who pay nothing and increasingly believe that the law doesn't restrict where they can go, often as a result of advice from their representative bodies.

If the Angling Trust were to issue advice to its members that the law about fishing in people's garden ponds might be unclear, and then thousands of them went fishing in private gardens, there would rightly be an outcry. The equivalent is happening on rivers which are owned and leased by angling clubs.





## 2. Why does it matter?

On larger designated navigable rivers and canals there are few, if any conflicts with angling. The water is deeper, the fish are used to the regular presence of boat traffic and both sets of water users can usually enjoy their respective pastimes without unduly impacting upon one another. There are times when the boat traffic becomes very intensive (as on the lower Wye in the summer holiday season) when fishing can become difficult or impossible but in most instances boaters and anglers co-exist reasonably well on navigable waterways.

However, this is not the case in the smaller rivers and shallower streams where the unexpected arrival of even one or two canoes sends the fish fleeing for cover and ruins any prospect of sport for paying anglers for several hours, if not the rest of the day. In smaller streams fishing is often carried out by wading and attempting to stalk the fish. Concealment and stealth are key skills as wild fish in clear water are extremely cautious creatures which will stop feeding, or hide under banks, for many hours if they are disturbed. A sudden flotilla of canoes coming down river is not only a danger to wading anglers, and accidents have occurred, it can also render fishing impossible.

The angler will have paid up to £72 to the Environment Agency for a rod licence and quite probably a considerable sum to the riparian owner via a day ticket or club membership in order to secure permission to fish that stretch of river. By contrast many canoeists pay nothing and increasingly expect to be able to paddle wherever they like and when they like without regard for the rights and enjoyment of other river

users or the water environment. Such unfettered and unmanaged access could dramatically reduce the economic value of the affected fisheries and the many jobs that they support. Many stretches of river are owned by angling clubs who take out loans to buy them based on future income from members, but would struggle to keep up repayments if regular canoe traffic deterred members from paying subscriptions or non-members from buying day tickets. Many clubs have enjoyed peaceful fishing for hundreds of years and are now feeling very threatened by the invasion of canoeists, who can be aggressive when told that they are trespassing.

Angling remains one of the most popular participant sports in the UK and makes a significant contribution to employment, tourism and the economy. It is enjoyed by over 3 million people, delivers £3.5 billion in economic benefit and creates employment for around 40,000 people.

Fishing is limited with seasonal closures and many by-laws in place to restrict the activity in order to minimise any impact on the environment. Under Section 2(4) of the Salmon and Freshwater Fisheries Act (1975) "any person who [...] wilfully disturbs any spawn or spawning fish, or any bed, bank or shallow on which any spawn or spawning fish may be, shall be guilty of an offence", but many trespassing canoeists paddle through spawning areas in rivers and their head waters on a regular basis. Even if they don't always disturb the redds themselves, they can disturb the fish at the point of spawning which could have an impact on spawning success and hence populations. Closed seasons for fishing reflect the timings of spawning.

The Act also says (s17) that "Any person who [...] scares or disturbs any salmon or trout [...] at any place above or below any dam or any obstruction, whether artificial or natural, which hinders or retards the passage of salmon or trout, being within 50 yards above or 100 yards below the dam or obstruction [...] shall be guilty of an offence." Canoeists will often spend time around weirs and other features in the river and this risks deterring the migration of fish which can be critical in stopping them completing their lifecycle. Some access agreements contain rules that seek to protect and minimise disturbance of migrating fish.

Anglers are also careful to follow the 'Check, Clean, Dry' code to minimise the risks of introducing, via their equipment, waterborne diseases such as *Gyrodactylus salaris* and harmful non-native invasive species such as the killer shrimp – both of which can be unwittingly transported on the bottoms of small boats, in water transported inside the boats and on damp clothing. Unlawful access and egress (including "seal launches" which involve sliding into rivers) can also cause local erosion to river banks, as well as damage to spawn and spawning sites (as above).

### **See Appendix D for a report on the impact of unlawful canoeing on the River Tavy in Devon**

However, there are many opportunities to increase canoe access to rivers, as long as such access is regulated and managed to avoid damage to the environment and to the rights of other legitimate users and property owners. Such agreements need to reflect the local conditions of a particular river, the type of fishing that is carried out and the behaviour of the fish (e.g. spawning times vary from river to river). We provide several examples of working agreements in section 3 below and there are many others throughout the country. England and Wales have very high population densities and their rivers are generally quite small and in many cases suffering from over-abstraction, pollution and habitat damage. It makes sense to have local agreements that specify how people can access and enjoy them to avoid damage or conflict.

### 3. Examples of Workable Voluntary Access Agreements (VAA)

**1. The Wye above Glasbury** - the Upper Wye has a long established voluntary access agreement which allows for canoe access at designated times of the year when the river level gauge is at sufficient height to render fishing impractical but which will produce the white water that serious canoeists wish to experience. The local River Trust, The Wye and Usk Foundation, considers that this delivers the best of both worlds and is a good example of agreed and respectful shared use.

**2. River Fowey, Cornwall** – agreement for canoeing 10 miles of the Fowey during the fishing close season, ie 16 December – 31 March, when river is above 2' 6" on a known gauge to avoid interference with spawning salmon. Agreement continues with local canoe club despite CE's national policy of only accepting agreements which permit unlimited access.

**3. River Dart, Devon/Dartmoor National Park** – possibly the best white water canoeing in England. For decades canoeing was available from 1 October to 15 March (longer than the fishing close season) under a legal contract between the Dart Fisheries Association and Canoe England. This is still under offer as a VAA but CE local officers, initially willing to endorse it, withdrew their endorsement under instruction from CE Head Office.

**4. River Axe, Devon** – a local agreement between the Axe Vale Rivers Association and Axe Vale Canoe Club has operated successfully for many years, but the CE Local Access Officer has been sacked because of his refusal to toe the CE line – the agreement continues without CE endorsement.

**5. River Lyn, Devon/Exmoor National Park** – after much negotiation, including with the CE Local Waterway Advisor, a Permissive Access Arrangement was agreed covering the lower East Lyn, mostly owned by the National Trust, for canoeing in the fishing close season. Although endorsed by Natural England, National Park, and the Environment Agency, Canoe England refused to endorse it following blogged expressions of disapproval by canoe activists. Conditions include minimum water height (monitored by webcam) and an upstream limit, both to protect spawning fish. Although CE refused to endorse it the facility has proceeded on an overtly permissive basis - despite the canoeists' representative, a Mr Peter Thorn, having effectively encouraged trespass by posting details of his own breach of its conditions online.

**6. River Barle, Devon/Somerset/Exmoor National Park** – again after much negotiation a VAA was agreed during the fishing close season from an easy access point downstream – upstream was considered too vulnerable for spawning fish. The riparian owners persuaded one landowner to agree despite his reservations. As the second most popular river after the Dart it is subject to much pressure, including during the fishing season and upstream of the agreed limit.

**7. River Tawe, South Wales** – an access agreement with the Tawe and Tributaries Angling Association was terminated by the Welsh Canoeing Association (now Canoe Wales) in 2007, stating that "the WCA Board...has issued a directive that 'access agreements' are unsustainable and ineffective mechanisms for managing recreational canoeing. The board have issued a mandate not to enter into such arrangements..." (see Appendix Q)

## 4. The Law on Navigation

The law on navigation can be summarised as: “There is no general public right to navigate on non-tidal rivers”.

**Some canoeists have asserted that there is a general public right of navigation (PRN). That is incorrect. As recently as 12 July 2013, a BBC article “The fight for England’s rivers: Canoeists call for greater access” quoted Jonathan Karas QC (who is unconnected to the Angling Trust or Fish Legal) as stating the following:**

- *“...the legal starting point is that there is no general public right to navigate on non-tidal rivers.”*
- *“They are owned as part of the land through which they pass”*
- *“The suggestion that there are general public rights of navigation dating from medieval times is a misunderstanding.”*

From here: [http://www.bbc.co.uk/news/uk-england-20182198#story\\_continues\\_1](http://www.bbc.co.uk/news/uk-england-20182198#story_continues_1)

Additionally the June 2010 report of the National Assembly for Wales Sustainability Committee – **“Inquiry into Access to Inland Water in Wales”** said at paragraph 15:

*“The position in relation to non-tidal waters is different. The public right of navigation that exists on tidal waters does not apply to non-tidal waters, and consequently there is no general common law right of public navigation either in non-tidal rivers, or on inland lakes.”*

The report continues at paragraph 39:

*“We do not, however, regard the legal position, as explained in section 1 [of this Inquiry Report, which includes paragraph 15 as quoted above], as being, in practice, at all ambiguous or uncertain.”*

and at paragraph 40:

*“It is true that some witnesses have suggested that ancient rights of navigation and access exist on all rivers that are physically navigable. There is however, no modern judicial precedent which supports this, and whilst we have considered the views of these witnesses with interest, we cannot, for the purposes of our inquiry, base our recommendations on a view of the law which is at odds with the one that is generally accepted.”*

**We include in APPENDIX B an extract from Counsel’s Advice which concisely summarises the general law in this area and concludes as follows:**

***“the law is clear: the present position is that there is no prima facie Public Right of Navigation (PRN) on non-tidal rivers at common law.”***



## 5. BCU/CE/CW disregard of the law and riparian rights

The Canoeing governing bodies simply refuse to acknowledge the rights of riparian owners or other river users. For example, Canoe England's Access Policy Position Statement issued in June 2010 states:

***“Canoe England fundamentally believes in the principle for access to and along unregulated non-tidal waters and does not subscribe to the present assumption by some for these waters to be deemed private”***

What Canoe England and the BCU fail to publically acknowledge is that the “present assumptions” are a result of judicial precedent over the last few hundred years.

The river access campaign website (<http://www.riversaccess.org/pages/pv.asp?p=rac1> ) appears on the face of it to accept that there is no automatic right to paddle. Canoe England even state (here: <http://www.canoe-england.org.uk/about/campaigns/> ) that if you do not have permission to navigate then you commit trespass, yet, in other publications on this matter, they imply that there might be a general right of navigation. For example, in their leaflet “Waterways and Environment Charter” they state: *“Canoe England does not subscribe to the present assumption, by some, of the law that unregulated rivers (where there is no active navigation authority) and usable by boats are private. Magna Carta and the strength of the latest historical research on the law the [sic] www.caffynonrivers.co.uk are further grounds for a presumption in favour of access and public rights to inland waters that are physically useable.”*

It is this inconsistency that is causing conflict and confusion and leading to widespread unlawful canoeing because their view does not override the current law, but is presented as if it does.

**We believe that this conduct is unacceptable for national governing bodies. We are asking for direct intervention from Ministers and the funding agencies to put a stop to what could be seen to be incitement to trespass and this blatant disregard for the legitimate rights of riparian owners and lawful river users such as anglers.**

The Angling Trust has obtained a copy of an email from one of the Canoe England Regional Waterways Advisers, threatening to dismiss one of his local waterways officers if they proceed with a voluntary access agreement with the local angling association on the River Axe as *‘your current access agreement is now outside Canoe England policy.’* Apparently, for this individual to remain as a voluntary local waterways adviser, he was told in no uncertain terms... *‘you will need to embrace and pursue CE policy’*.

**We believe that it is unacceptable for organisations such as Canoe England (a division of the BCU) to behave in this manner and to threaten other canoeists who are content to reach amicable voluntary access agreements with riparian owners and other river users. We also believe that it is wholly unacceptable to refuse to recognise the law or to follow government policy and yet remain in receipt of public money from Sport England and other bodies.**

**Sources of inaccurate and misleading information:**

<http://www.canoe-england.org.uk/media/pdf/AA%20Position%20Statement%208%20June%202012%20.pdf>

Section 3 deals with Government favoured ‘Voluntary Access Agreements’ which are rejected in favour of ‘Access Arrangements’

<http://www.ukriversguidebook.co.uk/forum/viewtopic.php?f=3&t=96968#p666453>





## Examples

### A) General

The most obvious example is the equivocation by CE on the legal position, including on its own website, which gives clear comfort to those planning unlawful canoeing and is often quoted when conflicts occur.

At least three former CE Local Access Officers have resigned/been sacked for seeking to agree to VAA's which do not meet the CE policy of 365-day access or other restrictions such as upstream limits (Axe, Lynher, Fowey). We understand that all volunteer LAOs/Waterways Advisors have contracts requiring them to adhere to CE policy on access, which does not respect the need for voluntary access to be flexible and reflect the local needs of the environment and anglers (and comply with the law and government policy).

One CE representative in particular, Peter Thorn (Vice-Chairman SW CE, Regional Waterway Advisor, and Local Waterway Advisor for the Barle and Lyn), has consistently undermined VAAs in various ways, including by speaking at statutory Local Access Fora, personally canoeing on stretches not covered by VAAs, and renegeing after verbally agreeing to VAA conditions, most notably on the Rivers Dart and Lyn.

### B) Report on Canoes on the Tavy – Concerns about Canoe England/British Canoe Union

#### Agreements

The Tavy, Walkham and Plym Fishing Club had talks with the British Canoe Union Access Officer Adam Box and colleague in about 2006. It was explained that while anglers were not averse to sharing the resource, canoeists were ruining a local sporting tradition that had existed for over 100 years and has an important place in angling history.

Talks were amicable and initially the BCU representatives were patient and listened. The club was told that agreements were in place on the Lyn in North Devon and on the Dart and a similar agreement for the Tavy was proposed. However flaws in those existing agreements were exposed.

The BCU representatives admitted to fisheries representatives that canoeists were flagrantly breaking the agreement by canoeing when the river was 'off limits' and numbers regularly exceeded those agreed. The BCU were adamant that they would not 'police' any agreement nor sanction any of its members. Any agreement was clearly valueless and so discussions were halted.

Canoeing continued to increase but initially fishermen encountered small numbers in the fishing season. The Dart agreement (though often ignored) tended to create an approximate canoeing season. While there were concerns about spawning being disturbed and the growing competitions to see 'how many rivers could be run in one day' (which had the potential to spread disease and invasive species), fishing – whilst impacted – was not affected on a daily basis until about 2010.

### **Agreements abandoned**

Forums on the canoeists' websites showed that there was growing awareness that agreements were there to be broken. The attitudes that 'if there is water - I will paddle it' and 'no one is going to tell me where and when I can paddle' were being applauded. While some encouraged caution, there was very little dissent and no calls from the canoeists' governing bodies for their members to obey the law.

Canoeing increased significantly on the Tavy from 2010; on Saturdays over a hundred canoes have been counted on the river and in parties of up to forty at a time. The fishing season was being ignored.

### **Canoeist believe that they have rights of access**

When challenged canoeists are claiming with absolute confidence that no agreement is required - canoeists believe that they have 'a right of way'. There is a standard pat answer to all challenges, a big grin and 'have a nice day'.

The River Tavy forum on the website documents the despair of the landowner at Denham Bridge who initially challenged canoeists and leafleted cars but has since given up.

Discussions with canoeists indicate that they are clearly being misled about the legal position and their effects on angling. They give the source as Canoe England but when pressed admit that the message is being disseminated by local representatives. All are confident that ultimately any opposition will be worn down. This seems to be a centrally directed policy.

## 6. Summary and Way Forward

1. There is a growing problem of unlawful and unauthorised canoeing impacting on anglers and other river users and adversely affecting the value of fisheries and the rights of riparian owners. The situation is compounded by the attitude and published stance of the canoeing governing bodies, (who on the one hand refuse to acknowledge the law but on the other campaign to change it) to undermine existing voluntary agreements in pursuit of their wider campaign for unfettered access.
2. An increasing number of canoeists appear to be being misinformed by the BCU, CE and CW leading to tension, arguments and unnecessary conflicts. The numbers of militant canoeists and frequency of organised trespasses is growing.
3. Voluntary Access Agreements have been shown to work and must be encouraged and supported by the governing bodies of canoeing. The Angling Trust promotes them widely.
4. Canoes should be registered and licensed on non tidal waters in order to ensure accountability, identify lawful users and to assist in the enforcement of access agreements.
5. Public funding to National Governing Bodies should be contingent on compliance with the letter and spirit of the law and promoting compliance to members.
6. Bio-security and the protection of fish spawning grounds must not be compromised in any way. Byelaws need strengthening in this area.
7. Angling clubs take out public liability insurance to cover waters that they own or rent from riparian owners. Riparian owners and occupiers are potentially liable for accidents on their property, or property that they occupy, and this can include trespassers in certain circumstances. With increasing trespass by canoeists there are greater insurance costs and legal risks to owners and occupiers subjected to unlawful access and navigation. These risks need to be managed under agreements.
8. It is unfair that anglers, who pay a rod licence to the Environment Agency for the right to fish and a fee or subscription to the riparian owner or angling club for permission to fish, should have their sport ruined and their legitimate right to 'quiet enjoyment' diminished by people who pay nothing and who, in many cases, are knowingly engaged in acts of trespass.
9. Angling organisations and River Trusts make a huge contribution to protecting and improving rivers and the fisheries they support through habitat enhancement projects, water quality and riverfly monitoring and taking action against polluters, in addition to more than £20 million in rod licence fees each year. Much of this important voluntary effort and important funding will be lost if anglers are driven off the water.
10. Widening access to one sport should not be done at the expense of another. Angling is a long-established sport which is enjoyed by millions of people and makes a significant contribution to both the environment and the economy. It generates £3.5 billion and employs around 37,000 people directly.
11. One potential solution would be for angling clubs to create canoe sections so that members who wish to paddle could join the club and pay a membership fee and then they would be bound by the rules of the club. This has been successfully implemented by the Pontardawe and Swansea Angling Society (See appendix N).

## **7. Conclusion: Time to intervene?**

**We believe that the conduct of Canoe England and the BCU is wholly unacceptable for governing bodies in receipt of public funds. Every year the situation is getting worse with more reports of conflicts as more and more canoeists come to believe what their governing bodies are saying about whether or not there is a universal public right of navigation. We are asking for direct intervention from Ministers in both England and Wales and the funding agencies to put a stop to what could easily be construed to be incitement to trespass and this blatant disregard for the legitimate rights of riparian owners and lawful river users such as anglers.**

**We believe that there is compelling evidence in this dossier that the use of boats on rivers must be properly regulated to protect their often sensitive ecosystems and also the rights of other legitimate users. Proposals currently being mooted by the Welsh Government for universal and unlimited access to rivers in Wales by boats must be shelved and the Canoeing governing bodies should instead be required to work with angling organisations to come to sensible access agreements.**

## 8. Appendices

### APPENDIX A – Access Policy Statement from Canoe England 21 October 2013

#### A Briefing note for members, volunteers and staff

##### 1 Introduction

For more than 60 years there has been limited success in improving canoe access to and along unregulated rivers in England. The handful of gains could be restricted to a few days, weeks or months of the year. These efforts were often based on the understanding, mainly promoted by riparian owners and angling interests, that their permission was required. This concept of permission to pass down rivers is now widely believed to be erroneous. However, more recently, we have successfully highlighted these issues to both external agencies and politicians who recognise that there is a problem with this assumption and as a result have formed strong working partnerships with many of them.

##### 2 Purpose of this briefing Note

This guidance document provides the background to Canoe England's access policy and ensures it is clear why we fundamentally believe in the principle of public access to and along unregulated waters (those without a navigation authority). Although contested by some, it is intended to send a clear message that we do not agree with the assumption by some that these waters are private.

##### 3 What are the Legal Opinions?

###### 3.1 Canoe England Overview

Canoe England (CE) considers that Magna Carta, the Act for Wears and Fishgarths 1472 and the associated research by the Revd. Dr D.J.M Caffyn confirms that there was, and is, a Public Right of Navigation (PRN) on all navigable rivers. This is supported by the fact that in every court case where a PRN has been claimed, it has been upheld that a PRN existed if the river was physically navigable.

Courts have instructed that sections of many rivers previously usable should be cleared of obstructions so that they could again be used by boats i.e. The House of Lords held that there was a public right of navigation on the usable sections of the Great Ouse between the dams. *A-G v Simpson* [1901] 2 Ch 671

###### 3.2 Caffyn – historic research findings

☑ From 1189 to 1600 there was a public right of navigation on all rivers which were physically usable.

☑ Rivers were more navigable in the period 1189 to 1600 than they are now.

☑ A right of navigation can only be extinguished by statute or because the section of river becomes physically un-navigable.

☑ There is, therefore, a public right of navigation on all rivers which are physically usable.



Referring to [www.caffynonrivers.co.uk](http://www.caffynonrivers.co.uk) River Transport 1189 – 1600', a thesis presented to the University of Sussex 2011 researching where access is disputed for public navigation; CE has gained a QC's opinion that his work has a moderate to strong legal argument.

### 3.3 Independent canoe access campaigns

Whilst CE and the independent access campaigns are in agreement with Caffyn's research, CE feel that some approaches to access issues can sometimes be confrontational. Our position differs slightly as we feel strongly that we MUST work in partnership with others to ensure the sustainable use of the natural environment is managed appropriately for all.

### 3.4 Angling Trust

The Angling Trust (AT) have taken a contrary view to Caffyn's research and stated:

"The law is clear that there is no general public right of navigation. Canoeists – just like anglers – need to obtain the permission of a landowner, or obtain the right to do so by buying such a right from that landowner." "The law has been repeatedly confirmed by the courts and is absolutely clear: there is no universal right for people to canoe on non-tidal waters". And "Public rights of navigation are in a class of their own. They are not created by historic use but most (or all) were created by statute."

AT have not explained where they consider Caffyn is wrong or produced evidence for legislation that has extinguished public navigation rights. Attempts to work with the AT had failed as they have stipulated that CE must accept their understanding of the law before a meeting could take place. However, the AT has recently indicated that they are now willing to communicate with CE regarding the shared use of rivers.

#### 3.4.1 Angling Trust further asserts:

Canoe England will not accept Access Arrangements (AA's). CE is open to AA's that comply with the Government sponsored access projects for the Rivers Mersey and Waveney. These projects have set a benchmark and these basic principles in Government Policy for the shared use of the water environment.

Canoeing impacts on angling and fisheries: Environment Agency Report "W266 - The Effects of Canoeing on Fish Stocks and Angling" concluded there is no empirical evidence linking canoeing with damage to fish spawning grounds or damage to fish stocks. Also, a Memorandum of Understanding drawn up between CE and Natural England

(formerly English Nature) agrees that there is unlikely to be any significant impact on or lasting disturbance to wildlife from the passage of canoes.

Anglers pay and canoeists do not: Canoeists do pay like other boaters where a service is provided such as on the Environment Agency (EA) navigations. Also, most canoeists contribute to improving the water environment through general taxation and water industry bills for upgrading wastewater treatment discharges. Grants from government, European Union (EU), National Lottery and other public funding for water environment improvement schemes have all brought direct benefits to angling and fisheries that are marketable assets.

Report W266 also concluded "It is difficult to envisage how a parallel can be drawn with a national license for canoes in relation to the service that would be provided. In the absence of an identifiable service in return this would inevitably be regarded by canoeists as an unjustified charge or simply another tax.

A DEFRA minister (Barry Gardiner MP) has stated: "Most facilities for outdoor recreation are paid for to some extent by national and local taxpayers and we want to make sure that everyone has the same opportunities and that we reduce any barriers to enjoying what is on offer".

### 3.5 DEFRA and the Minister for Natural Environment & Fisheries (Mr Richard Benyon MP)

In replies to CE members DEFRA stated - "There is no clear case law on whether a 'common law right of navigation' exists on unregulated rivers. This is widely accepted to be an unclear and unresolved issue. We are aware of the work of the Revd. Dr Douglas Caffyn, but have not sought or received advice on it nor formed a legal opinion on the validity of his research".

For a river with a Navigation Act and a disputed PRN the Minister stated - "Where private or other legislation covers individual waterways or navigations, that would tend to provide more certainty than for waterways without such specific legislation"

### **4.0 Conclusion**

The DEFRA and ministerial statements can only indicate the Government cannot define, and has not sought to clarify the legal rights and responsibilities for thousands of miles of non-tidal waters in England.

Caffyn has produced research to address unclear law with findings for a PRN on all rivers which are physically usable. This research remains unchallenged by competent legal authorities and academia.

Canoe England believes the legitimacy of third parties to challenge a PRN for canoe access along non-tidal waters is without foundation. Canoe England is keen to work with others for the benefit of all.

**Canoe England, Waterways & Environment Department, 21st Oct 2013.**

## APPENDIX B - Counsel's Opinion and the Law

### Extract of Advice from Counsel re Public Right of Navigation (PRN):

#### The Law on PRN on non-tidal rivers

##### The Law on PRN on non-tidal rivers 7 May 2012

17. It is a long and well-established legal principle that, unlike tidal waterways, there is no prima facie PRN on non-tidal rivers; A PRN may arise on a non-tidal river by immemorial usage (prescription), by statute, by express grant or dedication by the riparian owner and may be extinguished by statute, by Court order in certain circumstances or may deteriorate naturally; It cannot be lost as a result of mere disuse.
18. Save for Caffyn's article, which amounts to a single opinion from a non-lawyer and which, despite its age, so far as I am able to establish has not been considered by any Court<sup>1</sup>, the above position is universally accepted, including in all the major modern commentaries on waterways (Wisdom<sup>2</sup>, Bates<sup>3</sup> and Halsbury's Laws of England<sup>4</sup>) and appears to have underpinned the numerous cases concerning how and whether a PRN can be proved or extinguished on a non-tidal river.
19. Bourke v Davis (1890) L.R. 44 Ch. D. 110 provides early authority for the principle that there is no prima facie PRN on a non-tidal waterway. That case involved a dispute between riparian owner and owners of pleasure boats about the existence of a PRN on a non-tidal tributary of the Thames. The Court, by implication starting from the point of view that there was no prima facie PRN at common law (whether continuing from medieval times or otherwise), held that the Defendant had failed to prove that a PRN had arisen by prescription and that, accordingly, the riparian owner was entitled to prevent people from accessing his land.
20. Wisdom argues at para 6.10 that there is evidence for the principle from the existence of numerous Acts of Parliament that create PRNs on non-tidal waters (for example the Thames Conservancy Acts) whereas there are none in respect of tidal waters stating that "*this would*

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<sup>1</sup> Although a similar type of argument found some favour with the House of Lords in the Scottish case of Wills' Trustees v Cairngorm Canoeing and Sailing School Limited (1976) S.C. (H.L.) 30 in respect of Scottish law, Lord Maxwell took care to distinguish the position from that in English Law (see page 53). In any case, the House of Lords in that case unanimously found that a public right could not be acquired without evidence of long use (i.e. it did not exist as of right).

<sup>2</sup> Howarth and Jackson, Wisdom's Law of Watercourses (6<sup>th</sup> Edition, 2011), section 6-06 onwards

<sup>3</sup> Bates, Water and Drainage Law (1990, updated), see section 13.15 onwards

<sup>4</sup> see Water and Waterways, Volume 100 (2009) 5<sup>th</sup> Edition as updated, paragraph 701 onwards

*seem to support the view that these Acts were necessary either statutorily to confirm the existence of public rights that had been acquired by immemorial use or to create new rights for commercial reasons”.*

21. The two most recent authorities on PRNs also recognise this principle as settled law. In *Attorney-General Ex rel. Yorkshire Derwent Trust Ltd. and Another R v Brotherton and Others* [1991] 3 W.L.R. 1126 the House of Lords considered the question of how a PRN came into existence. Lord Oliver of Aymerton, considering the differences between a PRN on non-tidal waters and a right of way on land, stated, at 434:

*“since both involve passage across or through private property one would expect to find, as indeed one does find, that the origins of both lie in grant or presumed grant by the owner of the soil over or through which they pass”.*

22. Similarly, Lightman J in *Rowland v Environment Agency* [2002] EWHC 2785 (Ch)<sup>5</sup> stated obiter at paragraph 49:

*“There are two distinctions at common law between tidal and non-tidal rivers. (a) In the case of tidal rivers the presumption is that the bed of the river belongs to the Crown and to establish a PRN no prescriptive user is required; in non-tidal rivers the presumption is that it is vested in the riparian owners and a prescriptive user has to be established”.*

(The case concerned a privately owned stretch of the Thames, which is governed by the various Thames Conservancy Acts and so is not otherwise of direct relevance).

23. It seems, therefore, that the law is clear: the present position is that there is no prima facie PRN on non-tidal rivers at common law.

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<sup>5</sup> This was a first instance decision upheld by the Court of Appeal in *Rowland v Environment Agency* [2003] EWCA Civ 1885. The Court of Appeal did not consider the issue of PRNs on non-tidal rivers in their judgments.

## APPENDIX C – Government Policy



### **Benyon rejects canoeists' call for a universal right to paddle** 13<sup>th</sup> December.2012



**Angling bodies have been getting increasingly concerned at the conduct of the British Canoe Union (BCU) and Canoe England (CE) who are encouraging canoeists to defy the law and trample over anglers rights.**

They have been promoting a 'Right to Paddle' campaign for several years and simply refuse to acknowledge the existence of limitations on navigation in civil law. Both organisation promote canoeing guides and events which encourage canoeing on rivers where no lawful right of navigation exists.

Organised trespasses are becoming all the more commonplace and are promoted through the 'independent' website 'Song of the Paddle' <http://www.songofthepaddle.co.uk/> which promotes what they call 'open canoeing'.

The Angling Trust recently sought clarification on the canoeists demands from Fisheries and Natural Environment Minister Richard Benyon. The minister strongly rebutted the notion of an automatic 'right to paddle' up every stream, brook and river in the country regardless of the impact on either the environment or other river users.

Richard Benyon made it clear in an interview for the Angling Trust members magazine The Angle that there will be no legal right to paddle without the riparian owners permission. The previous Labour government was clear on this and the policy of voluntary access agreements only has now been re-affirmed by the Coalition government.



Text from Fisheries and Natural Environment Minister Richard Benyon's interview on canoeists

*1. Will you rule out a statutory 'right to paddle' for canoeists?*

I want to be really clear about this. While we want more people to get out and enjoy activities in the countryside they must be complimentary. There are plenty of places to canoe where it is appropriate and others where it is not. There will be no change to our policy of supporting voluntary access agreements as the only way forward. Anglers and fishery owners spend a lot of time and money caring for our rivers and streams and their rights deserve to be respected

**Angling Trust National Campaigns Coordinator Martin Salter said:**

"The Angling Trust has been challenging the claims being made by militant canoeists that they should have a right paddle up every river, stream or brook in Britain irrespective of ownership or the impact this has on wildlife or other people's enjoyment. The rights of navigation are clear in law and there are thousands of miles of navigable rivers and waterways to which canoeists have legal access. We also have well worked voluntary access agreements in place which allow canoeing on some rivers such as the Dart and the upper Wye at times of high water when fishing will not be affected.

Because the BCU is refusing to recognise the law of the land it is pulling out of these voluntary access agreements claiming they are now unnecessary. The rejection of a 'right to paddle' by Richard Benyon is most welcome and we call upon the organisations that represent canoeists to recognise the law of the land and that it is not going to be changed in their favour any time soon.

Continued authorised trespasses by the BCU could put funding for their sport in jeopardy which would be a shame as there is plenty of water out there for everyone to share provided that people agree to operate within the law and do not think that they can trample over the rights of anglers and others."

**ENDS**

## APPENDIX D -Fish Legal Court Victory

**Fish Legal**

Media Release

Tuesday 9 April 2013



### Canoe Campaigner's Access Case Sinks

A campaigner for universal canoe access, Mr. Andrew Biddulph, who tried to claim £4,000 from an angling club for restricting access to the River Dove, has been ordered by the Court to rewrite his claim or withdraw it and pay Fish Legal's costs. This case is a further blow to the incorrect claims of Mr. Biddulph and other campaigners – supported by Canoe England and the British Canoe Union – that there 'might' be a general right of navigation on all rivers.

The Burton-on-Trent Mutual Angling Association allows canoeists to use their part of the River Dove under an agreement with the local canoeing club for set times in the season. But Mr Biddulph demanded that the club recognise 'an ancient right' to canoe whenever and wherever he wished, or be taken to court.

Local anglers were shocked by the ultimatum but (as it was such an unusual case) Fish Legal agreed to help its member club defend its legal right to fish without the threat of constant disturbance from canoeing.

The canoeist's arguments came from a University thesis which says that canoeists are entitled to paddle on all rivers in England. The case was an attempt to put this theory into effect by challenging the current law, but also to extract money from the angling club.

Fish Legal made a court application to strike out his claim as an abuse of process and because it provided no reasonable (or legally recognisable) grounds for bringing the claim. After the application hearing Mr Biddulph chose to withdraw his claim, apparently accepting his case was without any merit.

It is the long accepted position of the Courts, and all respected legal books, that there is no general public right of navigation on non-tidal rivers. Unfortunately, Canoe England and the British Canoe Union create confusion amongst its members by suggesting that there is such a right.

Mark Lloyd, Chief Executive of the Angling Trust and Fish Legal said: "The law about navigation is absolutely clear: apart from on a few identified navigable rivers, there is no right of navigation without permission. The failure of this claim goes to show that such challenges to the law are bound to fail.

"The BCU and Canoe England should wake up to this fact and work with us to promote sensible voluntary access agreements. Many of our members have attempted to draw up agreements with local canoe clubs, only to find that the national canoeing bodies have ordered them not to sign agreements because they do not allow access at all times, or because they would have to accept that they need permission. We call on them to accept the law of the land, respect other people's property rights and to work with the Angling Trust and its members to increase access for canoes in a sustainable way to avoid further conflicts of this type."

## APPENDIX E - The effect of canoeing on fishing the Tavy

The River Tavy is a small 'spate' stream running off the western slopes of Dartmoor into the English Channel at Plymouth. It sustains populations of brown trout, sea trout and salmon. Some roach are present in the lake above Lopwell Dam but these are not fished for. This is left as a sanctuary. The upper reaches and a short section of the middle river runs through CROW designated land but the main fishing beats run through sections of private farmland and gardens.

### History & Fishing

The Tavy Walkham and Plym fishing club has been renting the fishing rights for the largest part of the river over a century; it is believed to be the second oldest fishing club in England. Early fishing writers Dawson and Bluett, grew up on the river.

Brown trout are most prevalent in the upper stretches where there is challenging fly-fishing for truly wild fish. Sea trout run the river from April and are the main target of club members. Some spinning for these fish takes place during spates but key sections are designated as 'fly only'; most locals fish with a fly after dark in the style documented by Bluett or with an upstream nymph style that has not been so well publicised. Spring salmon are rare but there are some summer grilse and often a healthy run of autumn salmon. These are pursued with fly and spinner according to river levels.

### Growing problem

Canoes were very rare seen until about 2007. (There is a local story that in the 1970s one elderly lady landowner took the back off a canoe with a shotgun.) Early explorers on what they called 'bandit runs' were told that they were not welcome and generally did not come back. With the 'Right to Paddle' campaign in 2006 there was an increase in the numbers of canoes on the water; initially small parties of 2-4 taking part in what were then termed 'bandit runs'. More recently the size of the parties have increased and often exceed 20 and one group of 40+ has been reported. Groups include canoe clubs, outdoor activity courses and privately guided groups. Over 100 canoes can travel down this small river on a Saturday. A significant number are competing to see how many rivers can be run on one day. They race through the lanes from one river system to another without getting out of their wet suits.

### Impact on Fishing

Sea trout fishing in the middle river from April to September is being heavily affected by canoeing. Fish that would shoal in the main pools from May are being disturbed and become more widely dispersed. They run upstream and take shelter under rocks or remain in the lower sanctuary section. Day-time fishing in clear water has become fruitless and night fishing has become harder. The August (Harvest Peal) runs have been down since canoeing increased (last 3 years) Catch returns are dropping on the previously most prolific beats.

Most canoes egress at the Forestry Commission car park below Denham Bridge and do not continue through the lowest (Abbey) beat. Catch returns for this beat remain unaffected. Canoeing prevents sea trout being stalked in clear water and fishermen are discouraged from fishing from 10.00 am onward when the paddlers appear. Salmon fishermen who would prefer the warmth of the afternoons when fish may rise to the floating line are being discouraged by probable encounters with canoeing.

## APPENDIX F - Situation in the South West

By Roger Furniss, Chair of the South West Rivers Association

It may help if I summarise our experience over many years in the South West.

Until BCU/CE adopted its policy of not endorsing any agreements which did not include 365 day access we had several very successful agreements which balanced the interests of riparian owners, anglers and canoeists. South West Rivers Association and its member river associations have continued to offer canoe access where there is no conflict with angling (which on most rivers has a season of half of the year) or with conservation, especially of sensitive spawning areas.

The best example was on the Dart, England's premier white water canoeing river, where there was a legal document between the Dart Fisheries Association and BCU/CE setting out detailed arrangements for access and canoeing in the fishing close season – effectively sharing the river for half of the year each, with a significant annual payment from CE. CE withdrew but the DFA continued to offer canoe access as before with the agreement of all relevant owners/angling association. Protracted discussions led to agreement over the new, less formal arrangements only for CE to then withdraw their support citing their insistence on 365 day access. The offer from Dart FA continues and canoeing continues but with a much more militant approach from canoeists including removal of signs setting out the arrangement and even signs placed by the EA to protect sensitive salmon spawning areas. As elsewhere canoeists quote the CE use of Caffyn's work to justify their right to canoe wherever and whenever they wish.

Phil Carey's considered note on the Lyn is attached.

On the Barle (major Exe tributary) there is a similar history of riparian interests bending over backwards to offer canoeing downstream of sensitive spawning areas outside of the main fishing times, again effectively a 50;50 shared use of the river. The riparian interests even went to great lengths to persuade the owner of a 'ransom strip' who did not want canoeing to allow it. Again it is clear from the canoeing social media that canoeists, including CE officers involved in negotiations, rely on Caffyn to reject the need for time and space controls.

On the Tamar and Lynher, the CE Local Access Officer, with whom we had longstanding good relations, resigned when CE adopted its hard line, recognising that she could not work with us in that situation.

I can provide the detail of meetings, correspondence, social media entries, etc to support the above.

### **BRIEFING NOTE – CANOEING ON THE EAST LYN, EXMOOR**

#### **BACKGROUND**

The East Lyn, which for much of its length forms part of an SSSI and SAC, is a narrow Exmoor spate river celebrated in literature and with a rich game fishing history. Whilst much of the middle and lower reaches are in National Trust ownership, the ownership pattern is complicated with numerous owners of riverside domestic property and of private fishing rights throughout its length. The fishing rights on much of the river downstream from Brendon are leased to the Environment Agency and operated as a trout, sea trout and salmon fishery providing day ticket access to the general public at reasonable prices. Over the last several years the river has experienced an extraordinary and continuing growth in unauthorised canoeing

generating increasing conflict with private property owners (whose privacy is compromised) owners of fishing rights and visiting paying anglers.

### **CANOEING ON THE EAST LYN**

A Voluntary Access Agreement (VAA) for canoeing has been impossible to negotiate on the East Lyn because of the policy position taken by the BCU/Canoe England. Nevertheless, in order to facilitate access, the National Trust permit (together with a small number of private owners and supported by the Lyn Riparian Owners' Association) winter only canoeing on the river from Watersmeet downstream, subject to a water level condition. This permissive access arrangement (which has been in being in some form for a number of years) is backed by a webcam indicating water level, information on the National Trust's and National Park's websites, well produced leaflets, and signage. Although the restrictions applying to this permission are familiar to canoeists they are widely and deliberately ignored, with canoeing taking place from some 2 1/2 miles upstream as far as Brendon and beyond, out of season and at inappropriate water levels risking environmental damage. The responsible authorities appear unable or unwilling to take positive action to manage this activity beyond advertising the supposed restrictions.

### **THE POSITION OF CANOE ENGLAND (CE)**

CE will not make formal access agreements with owners as to do so would be to accept the latter's legal entitlements. CE wish to promote voluntary access arrangements that fudge the legal relationships between owners and users – but will only endorse such arrangements on condition they meet its full 'demands' – normally including year round access. As long ago as November 2008, Adam Box, then BCU's Regional Access Officer for Devon and Cornwall, wrote to the Chairman of the Lyn Riparian Owners' Association as follows.

"Firstly, CE no longer accepts that to canoe on a non-tidal river is against the law. - - - CE does not believe that there is any law which says the owner of land beside a river has the right to control the passage of craft along that river. - - - Under such circumstances any negotiations to use a river are now not about seeking permission to use the water, but to make arrangements for the sharing of the water so as to minimise any inconvenience. - - - Secondly, if the owners of the land or fishing rights have no legal right to restrict access, CE now expect all access agreements (now known as arrangements) to be for 365 days of the year."

As a result of this arrogant and legally flawed policy, CE refused to endorse with its own logo the relevant publicity about the permissive access granted on the East Lyn from Watersmeet, both when the permission was formalised in 2009 and on its renewal for a further 3 years in 2012. The reason given was that access is seasonally restricted (in order to avoid disturbance to wildlife and limit conflict with anglers) and does not encompass a sufficient stretch of the river to attract its support.

CE's new position statement, published on its website last year, continues to make its stance plain: "Canoe England fundamentally believes in the principle for access to and along unregulated non-tidal waters and does not subscribe to the present assumption by some for these waters to be deemed private". CE has been very successful in promoting this notion amongst canoeing enthusiasts and has sown confusion about the prevailing law amongst others at every opportunity. Canoeists now widely believe they have a right to untrammelled access to all inland waters in England and Wales and act accordingly. Trespass on even the smallest Exmoor streams is now promoted by participants' postings at [www.ukriversguidebook.co.uk](http://www.ukriversguidebook.co.uk). Postings on this website by the CE representative Peter Thorn, giving detailed guidance about canoeing the



East Lyn from Brendon, whilst he simultaneously seeks an extension of permitted canoeing from this point, underline current CE attitudes – negotiation by force of numbers.

## **CONCLUSION**


Having failed in its attempts to change the law on river access, CE, a part publicly funded sport representative body, has simply declared the existence of open access based on nothing more than an academic thesis, and has encouraged canoeists in the exercise of non-existent rights. In a very short space of time the public policy issue has changed from the improvement of watersports access to its proper management in the face of widespread disregard for the rights of others. The current absence of effective controls on canoeists is in stark contrast to the strong regulatory regime involving licensing and byelaws applied to anglers and the legal obligations of riparian owners. CE has demonstrably failed to act as a responsible representative body and watersports access is quickly running out of control with potentially serious consequences for lawful owners, anglers, sensitive environments and respect for the law itself. The problem is exacerbated by the reluctance of responsible public authorities to vigorously endorse the true legal position or engage with the consequences of this inaction.

**( Phil Carey - Secretary Lyn Riparian Owners' Association – April 2013)**

## APPENDIX G – UK Rivers Guidebook, Canoe England and the BCU

**A recent thread on the UK Rivers Guide Book highlights the problems: Peter Thorn a Canoe England representative writes;**

Update on the Dart

 by [pete thorn](#) » Thu Nov 15, 2012 6:15 pm

- *We are unconvinced with the conventional legal position on access to inland waters requiring permission from riparian owners, based on Caffyn's work*
- *We were not, therefore, requesting any agreement, as this is not CE policy. (Note that no agreement has been in place for the Dart for several years though annual discussions took place)*
- *We enter discussions based on improving relations with other river interests with the aim of increasing understanding and equitable sharing of available water*


*Our position was that if paddlers were in possession of the facts they would make personal decisions about whether to paddle or not. Our role was to inform but CE had no role in policing.*

*It is clear that their negotiators really want us to acknowledge that their permission is required to paddle. This we did not accept, seeing their legal position as based on historical opinion, which has recently been shown as unsound*

*We will continue to maintain relationships with other river interests on SW rivers as it serves to improve mutual understanding and lessen tension.*

And again

Re: Update on the Dart

 by [pete thorn](#) » Mon Nov 19, 2012 2:26 pm

No confusion here, nor any secret agenda Morsey. Discussions have taken place annually and the document from DFA outlines their view. CE has not endorsed it for the reasons given. Old style legalese agreements have not been signed for years, although DFA wanted them, as they would tacitly gain recognition of the need for permission, which we did not accept.

The UK River Guidebook encourages paddling on the Tavy – is this incitement to trespass. Please see

<http://www.ukriversguidebook.co.uk/rivers/england/south-west/river-tavy-tavistock-to-denham-bridge#discussion>

According to Tamsin Phipps, of the British Canoe Union, fishermen are fat, white, and middle-aged (News, March 4 2007 ). This remains the prevailing attitude!

## APPENDIX H – Canoe England Position Statement

### Access Arrangements for the shared use of non-tidal waters by manually powered craft

#### Access to Water

Canoe England fundamentally believes in the principle for access to and along unregulated (1) non-tidal waters and does not subscribe to the present assumption by some for these waters to be deemed private. Recently published research contests this assumption (2). [HIGHLIGHTING ADDED]

Canoe England also takes a pragmatic view and believes that where Access Arrangements (3) are a means for shared use, they shall be on a joint local management basis that helps to protect the environment and respect the rights of other user interests.

The legal situation in England and environmental use of the waterways is detailed in the Canoe England Waterways and Environment Charter (4) and document "You, your canoe and the environment" (5).

From this position Canoe England will endeavour to:

- 1.1 Work constructively with partners, agencies, the local community, interest groups and the "Big Society" concept to support and develop the shared use of physically usable waters when environmental conditions (especially water levels) are suitable.
- 1.2 Develop acceptable management measures with partners to protect the environment and enable the wider use of waterways at all times as per the benchmark set by the Government access feasibility studies (2004): River Waveney - agreed minimum water levels, and no permit requirements; R Mersey  
–based on Dedication (6) for using waters.
- 1.3 Dispense with formal signed documentation, and for Access Arrangements's (AA's) to be based on statements/memorandums of understanding and/or Dedication.
- 1.4 Make these arrangements publicly available to all canoeists for self regulation.
- 1.5 Encourage canoeists to follow the guidelines of such arrangements.
- 1.6 Promote best environmental practice and responsible use and consideration for others on all waters.

Canoe England cannot regulate or police AA's or grant access to any waters with or without an AA, and will advise canoeists to only canoe when conditions are suitable (5). The decision whether or not to canoe is the responsibility of the individual canoeist(s).

Canoe England acknowledges the different opinions on the legal position where public rights are not recognised. An AA shall be without prejudice to the views of the legal position of either Canoe England or the riparian owners and other interests. An AA shall neither confirm nor reject any party's views or interpretation of the legal situation.

#### Public Rights

An AA shall not invalidate public rights to non-tidal waters physically usable by manually powered craft, to include canoes, should it be subsequently established:

- 2.1 Such rights have not been extinguished.
- 2.2 The historic use of usable waters is recognised to provide that right.

## References

### 1 Use of non-tidal waters

The position of public rights and the use of non-tidal waters in England are not straightforward: Where there is an active Navigation Authority or where historic rights are recognised, rights are defined. Where there is not an active Navigation Authority, waters are classified as unregulated and include abandoned navigations and other waterways on which there is a public right of navigation.

There is an assumption by some that many unregulated waters are private and use is resisted or shall be by way of a structured AA.

There is an overall lack of clarity for the shared use of non-tidal waters.

### 2 River Transport 1189-1600, February 2011; The Rev'd Dr Douglas Caffyn, [www.caffynonrivers.co.uk](http://www.caffynonrivers.co.uk)

### 3 In the absence of a recognised public right to a waterway, the previous and present Government's policy in England are for Voluntary Access Agreements (VAA's). These can have conditions of use independently set by third parties, rather than being mutually agreed. Canoe England uses the terminology Access Arrangements (AA's) rather than agreement.

Historically VAA's are without rights, insecure, being subject to termination at short notice. When arranged, the periods of use imposed can be limited to a few days or weeks per annum and make some provision for those requiring a greater certainty of access at particular times. VAA's are few in number due to the difficulties as highlighted by the Government sponsored demonstration access feasibility projects (2004). The project schemes on the Rivers Teme and Wear were unsuccessful.

The policy for VAA's has been shown to have failed to meet an unmet demand when Canoe England has a remit to promote canoeing on all suitable waters in England. They may work well for some individuals or small organisations, however they cannot be used for securing public access.

### 4 Canoe England Waterways & Environment Charter - <http://www.canoe-england.org.uk/waterways-and-environment/policies/>

The Charter takes into account the recently published research (2) that has established a strength of evidence for a historic public right of navigation to exist on all non-tidal waters that are physically usable. Canoe England believes the lack of certainty for public rights and the law has created tensions between user groups that can be resolved by a presumption in favour of a right of access; supported by appropriate local management measures.

### 5 You, your canoe and the environment - [www.canoe-england.org.uk/waterways-and-environment/environment](http://www.canoe-england.org.uk/waterways-and-environment/environment)

### 6 Dedication – leads to a public right of access. The Countryside & Rights of Way Act 2000 has provisions for Dedication by landowners and relaxing specific restrictions in the Act.

8 June 2012

## Appendix I – Welsh Assembly Government report Sustainability Committee Inquiry into Access to Inland Water in Wales (June 2010)

The inquiry came about because of a petition which was submitted to the Assembly's Petitions Committee by The Welsh Canoeing Association (now Canoe Wales). On 24 April 2008, the Assembly's Petitions Committee discussed a petition from The Welsh Canoeing Association (now Canoe Wales) calling for new laws to be introduced by the Welsh Government:

*"The Welsh Assembly Government is urged to consider and implement a Bill to benefit Wales that would enshrine access rights and responsibilities for the public to and along natural resources in the same way that the Scottish Land Reform Act encourages co-operative use of the outdoors for healthy, low impact recreation.*

*This Bill must provide and permit access to and along non-tidal water in the face of the massive lack of legal clarity and restrictions that exist at present, which act as a barrier to sport and recreation and the promotion of Wales as a place to visit for adventure tourism."*

**Then the matter was considered by the Sustainability Committee in 2009-10, who recommended that voluntary access arrangements should be developed, monitored and policed alongside a system of paid registration for canoes. The committee was quite specific in respect of the claims by Canoe Wales for public right of navigation, stating at paragraph 15:**

*"The position in relation to non-tidal waters is different. The public right of navigation that exists on tidal waters does not apply to non-tidal waters, and consequently **there is no general common law right of public navigation either in non-tidal rivers, or on inland lakes.**"*

The report continues at paragraph 39:

*"We do not, however, regard the legal position, as explained in section 1 [of this Inquiry Report, which includes paragraph 15 as quoted above], as being, **in practice, at all ambiguous or uncertain.**"*

and at paragraph 40:

*"It is true that some witnesses have suggested that ancient rights of navigation and access exist on all rivers that are physically navigable. There is however, no modern judicial precedent which supports this, and whilst we have considered the views of these witnesses with interest, we cannot, for the purposes of our inquiry, base our recommendations **on a view of the law which is at odds with the one that is generally accepted.**"*

## **Committee's Recommendations in full**

The Committee's recommendations to the Welsh Government are listed below, in the order that they appear in this Report. Please refer to the relevant pages of the report to see the supporting evidence and conclusions:

### **Recommendation 1.**

That the Minister for Environment, Sustainability and Housing strongly encourages and promotes the setting up of voluntary access agreements by landowners, through the existing 'Round Table' group of water pursuits interests and actively encourages land owners such as public bodies (e.g. the Forestry Commission, local authorities) and large charities (e.g. the National Trust) to pilot the type of access agreements outlined in this report. (Page 27)

### **Recommendation 2.**

That the Minister for Environment, Sustainability and Housing targets Splash funding at these pilot projects. The effects of the pilot projects should be closely monitored and the outcomes widely disseminated. (Page 28)

### **Recommendation 3.**

That access agreements be sought under the Glastir scheme where appropriate for ingress and egress points, any associated facilities such as car parking and changing facilities and access across land to any body of inland water over or on which access rights have been granted. (Page 28)

### **Recommendation 4.**

That all access agreements should be subject to the monitoring and assessment of the environmental quality of the water covered by the agreement at regular intervals. (Page 28)

### **Recommendation 5.**

Legislation should be introduced to identify a lead authority for the identification of particular areas of inland water where access agreements are appropriate and for the negotiation of voluntary access agreements for non motorised recreational purposes in those areas. That body will be placed under a positive duty to facilitate more voluntary access agreements, including a power to finance associated works. (Page 29)

### **Recommendation 6.**

The legislation referred to in recommendation 5 should also place power on a lead authority to designate such bodies of water as ones to which access rights would attach compulsorily if no voluntary agreement could be reached. (Page 29)



**Recommendation 7.**

In order to guarantee compliance with the European Convention on Human Rights there would need to be a right to object to a designation and for the objection to be considered in detail (e.g. at an inquiry) and there would need to be provision for compensation for compulsory interference with property (including fishing rights) where that interference could be shown to have caused loss. (Page 30)

**Recommendation 8.**

We recognise that neither the Welsh Ministers nor the Assembly currently have legislative competence to implement recommendations 5-7 and recommend that such legislative competence is sought as soon as possible (Page 30)

**Recommendation 9.**

That organisations who make a profit out of water related recreation should pay a fee to be licensed and that their craft should be registered and clearly marked. (Page 30)

**Recommendation 10.**

That a licensing system for those using unpowered craft on inland water should be introduced. (Page 31)

**Recommendation 11.**

That the Minister for Environment, Sustainability and Housing commence the drafting and consultation process on a national code of conduct for using the water to be used in those areas where access is granted. (Page 31)

**Recommendation 12.**

That any code of conduct should make explicit the rights and responsibilities of users and access owners and should be promoted and advertised by all organisations involved in giving or using access to inland water as well as national organisations such as the Welsh Government, CCW, Environment Agency Wales, Visit Wales and the Sports Council for Wales. (Page 31)

**Recommendation 13.**

That a national website should be set up, containing details of all the stretches of water in Wales where access has been agreed and containing up to date information on current and predicted water levels, events taking place which may restrict access and any other information which would help users to access the water safely and legally.

## APPENDIX J – Problems in other areas in England

### 1. Sussex

#### Rivers Rother and Arun

Anglers in Sussex are reporting that BCU/Canoe England are preparing a campaign to assert a Public Right of Navigation on the Arun and Rother. The UK Rivers Guidebook already encourages trespass in this location. Angling interests were prepared to discuss voluntary access agreements but it became apparent that the BCU/Canoe England were only interested in access on their terms and discussions around angling use, payment for access maintenance and bailiffing were rejected as not being the National Governing Body's responsibility. The BCU were adamant that they would not monitor compliance with any arrangement or cooperate with a proposed permissive access scheme whereby participants would be registered and badged.

### 2. Yorkshire

#### River Aire, Keighley

The Angling Trust was recently contacted by Keighley Angling Club, one of five local clubs with fishing rights on the non navigable River Aire which was being affected by unauthorised canoeing. Conflicts occurred and fishing competitions were disrupted. This appeared to be part of a coordinated access campaign by local canoeing organisations as evidenced by the April event advertised here by the Halifax Canoe Club <http://halifaxcanoe.org.uk/page290.html> and the posting of the river on the canoeists website <http://access.canoeadaysout.com/map/showonly/1350> which encourages unauthorised canoeing in order to establish access rights. Reports of these events have quite clearly demonstrated deliberate trespass on private land in order to access the river.

Keighley Angling Club have been collating all the information about the canoeing incidents and have been looking at the history of the river Aire. Details here <http://www.keighleyanglingclub.co.uk>

#### River Dearne

The issue of canoeing on the River Dearne had never raised its head until the formation of the Manvers Waterfront Boat Club whose director was a Canoe England facilities manager. Conflicts followed on this small river and it was hoped that they would be resolved with the establishment of the Dearne Access agreement. Unfortunately there have been many instances where it has not been adhered to but the canoe club's response is to claim "they are not our paddlers"

### 3. Norfolk and Suffolk

#### Rivers Waveney and Bure

The Broads Authority have recently launched a canoe trail on the River Waveney Loop near Bungay <http://www.enjoythebroads.com/sites/default/files/pdfs/Bungay%20Canoe%20Trail.pdf> which is outside the formal Navigation area. This is in contravention of the designated area set aside for canoeing.

Local anglers have had it well established by law that there is no right of navigation on the River Bure above Aylsham Mill and were concerned to see this section of the river advertised as open for

canoeing in the holiday section of a national newspaper. Representations have been made to the Norfolk Tourist Board and the Broads Authority.

#### **4. Wales**

##### **River Wye between Glasbury and Hay**

Navigation rights exist on the River Wye below Hay with a voluntary access arrangement in place upstream of Glasbury. However, the non navigable river between Glasbury and Hay remains heavily canoed, mainly on a commercial basis, causing regular conflicts. Anglers wading the river in this location have been knocked into the fast flowing water by inexperienced canoe hirers unable to control their craft.

##### **River Wye below Hay**

The lower river has seen an unsustainable 150% increase in commercial canoe hire over the last ten years rendering much of the fishing unlettable during summer weekends and during the school holidays. The Wye and Usk Foundation records incidents of conflicts with canoeists, including collisions with wading anglers, on its website here

<http://www.wyeuskfoundation.org/navigation/feedback.php>

#### **5.Devon**

##### **River Axe**

30 Sep 2013

Hello [NAME REMOVED]

I am sorry to say that I have now definitely been deposed as River Axe Adviser by Canoe England. To remain in that position they require me to adopt CE policy on access, tear up the agreement that exists between AVRA and AVCC, pay nothing by way of a licence, and definitely to stop policing the river. I flatly refuse to adhere to any of these demands, so I have been kicked out.

I think it would be best for us to meet at some time soon and discuss the way forward. There are no issues with Axe Vale Canoe Club, we will continue to abide by the terms of the existing agreement, but I am unable to exercise any authority over a canoeist, or group of canoeists, who are not members of AVCC. Sad to say that there are more and more rogue/militant canoeists in the world today but even worse is that they appear to have the support of Canoe England.

With kind regards.

[NAME REMOVED]

Axe Vale Canoe Club

## **APPENDIX K – Canoeing Websites promoting trespass**

<http://www.canoe-enland.org.uk/waterways-and-environment/policies/>

<http://www.songofthepaddle.co.uk/>

<http://access.canoedaysout.com/>

[www.ukriversguidebook.co.uk](http://www.ukriversguidebook.co.uk)

## APPENDIX L – Email from Defra

**Subject:** Response to your Query : -  
Ref:DWOE000299369 - River  
Navigation  
**Date:** THU, 07 FEB 2013 16:01:16  
**From:** ccu.correspondence@defra.gsi.gov.uk  
**To:** keith@riveraccessforall.co.uk

Dear Mr Day

Thank you for your email of 25 January about public navigation on unregulated rivers. As I understand the Attorney General's office have advised you, it was passed to this department as it falls within Defra's responsibilities. There is no clear case law on whether a 'common law right of navigation' exists on unregulated rivers. This is widely accepted to be an unclear and unresolved issue. [HIGHLIGHTING ADDED] The sources used by the Revd Dr Caffyn in his work themselves date back to antiquity. Whether such a right of navigation could be found to exist could only be resolved by a court judgement. Therefore, Defra has agreed that it would not be good use of public funds to commission research into the Revd Dr Caffyn's work. Defra's policy remains that all 2,000 miles of canals and rivers entrusted to the Canal & River Trust are open to recreational users such as canoeists and that those wishing to use other waterways can work with the landowner to agree access. Defra believes that these decisions are best made between local people, according to their area's own recreational, business and conservation needs, rather than by central Government.

Yours sincerely

Sarah Hill

Defra – Customer Contact Unit

Department for Environment, Food and Rural Affairs (Defra)

***[There followed correspondence between Fish Legal and Defra (still ongoing at the time of going to press). Fish Legal requested that Defra withdraw the statement about this being an "unclear and unresolved issue" because the Canoeing Governing Bodies have widely quoted this short sentence to imply that Defra believes that there might be a universal right of access to rivers, despite the rest of the letter clearly implying that there is not.]***

## APPENDIX M – Press release from Conwy Valley Fisheries & Conservation Association

(Issued 3 November '13)

### Appeal to canoeists to consider spawning salmon

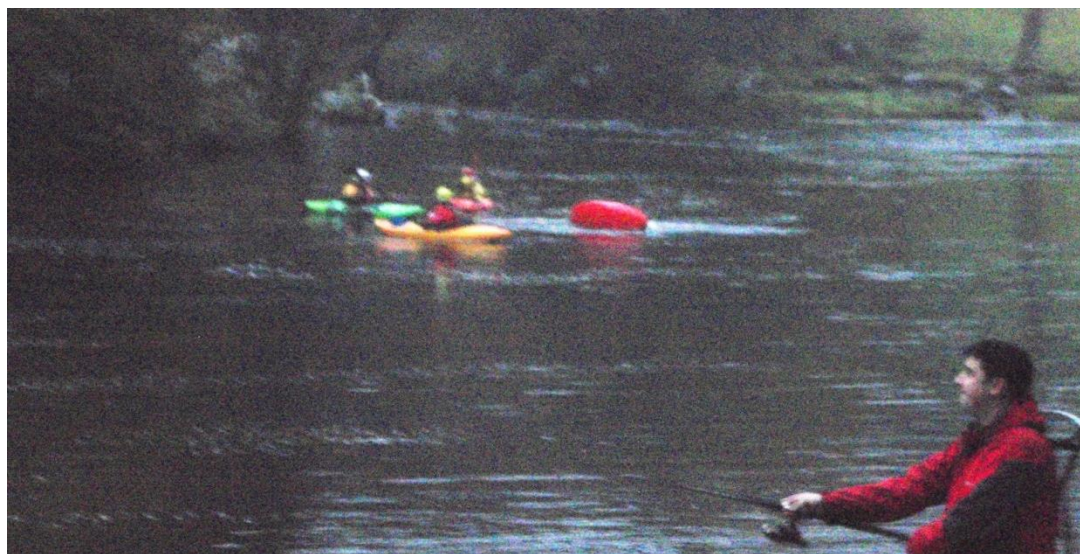
The Conwy Valley Fisheries & Conservation Association is appealing to canoeists to consider the disturbance they may cause to spawning salmon in the upper reaches of the Afon Conwy and its main tributaries, the Lledr and the Llugwy, from November to the end of January by canoeing over areas where salmon are spawning.

Commenting about the appeal, CVF&CA member, Chris White, said: "Paddling over spawning areas at this time of year is the equivalent to walking across a field full of nesting birds in the spring. On narrow rivers, such activity, irrespective of water height, disturbs fish which are now gathering at their spawning sites but won't be able to lay their eggs if they are driven from these sites."

Mr White also went on to explain that Environment Agency Wales, now part of Natural Resources Wales, has in the past erected information boards at known entry points used by canoeists showing spawning areas within the Conwy catchment. Unfortunately the maps are not detailed enough to show sensitive areas and most rivers and streams are shown as spawning areas. As a result some canoeists don't understand or choose to ignore the information on these boards and paddle irrespective of water conditions believing they do no harm when in fact they frequently do.

Another weakness in the advice that has been offered to canoeists by Environment Agency Wales is that it is based on conditions found on the River Wye, which is a much bigger river and bears no resemblance to conditions found on the Afon Conwy and its tributaries.

Mr White also went on to point out that to knowingly disturb spawning fish is an offence under the Salmon & Freshwater Fisheries Act (SAFFA) but that he would prefer to prevent this happening by improved understanding of the issue and by greater co-operation between river users rather than having to resort to the law. This is not about stopping paddlers. It is about protecting spawning salmon. My advice to canoeists is to study the content of the information boards displayed where they are thinking of launching their canoes and abide by the advice given or, if there isn't a board at the launch point, to use their common sense and to consider the wellbeing of this endangered species."





## Appendix N: Canoe Wales apparently applies pressure on Llandysul Paddlers not to sign a VAA

The Teifi Fishermen's Federation (TFF), which represents most of the clubs on the River Teifi in West Wales, succeeded in getting the local canoe centre to enter negotiations to draw up a Voluntary Access Agreement.

After approximately 2 years of talks the draft VAA contained agreements on:

- > Identification of users.
- > A 4 week canoe-free period for the last 4 weeks of the fishing season.
- > Some no go areas, such as the tributaries, the upper river, and Cenarth Falls.
- > A Code of conduct for both groups.
- > Time restrictions on early morning and evening paddling.
- > A £500 pa donation to the River Trust
- > No use of Rafts.
- > Not to allow the launching of Commercial rafts from the Paddlers premises.

The paddlers would not accept the law or that they should gain permission to use other people's property or any reference to it being made in the VAA.

They also insisted that they could carry on as before and were therefore doing the anglers a favour by conceding to these conditions

TFF wanted a more equitable division of time. The Paddlers would not move on this issue. The TFF agreed to call in the Welsh Assembly Government's arbitrator Mr M Strickland. At the next meeting when Mr Strickland was present the TFF offered 2 alternatives in addition to unrestricted use outside the fishing season.

1. To allocate a specific stretch of river for canoe use.
2. During the fishing season to allow three and a half days per week canoe access to allow three and a half days per week canoe free angling.

The paddlers refused to agree to either of these options.

The arbitrator agreed with the TFF that the offer was more than fair but no conclusion was reached.

There were several other issues that occurred during these talks that indicated that the paddlers would not move from their stance. They believed that they should have free open access at any time. After a slightly tense atmosphere at the first meetings, the negotiations were friendly. The TFF negotiation team all got the distinct impression that the paddlers were under extreme pressure / threat from Canoe Wales throughout the talks.

## Appendix O: Extract from Pontardawe and Swansea Angling Society's web site (<http://www.pasas.org.uk/canoeing.html>)

...the Society decided at a general meeting in September 2010 to create a canoe section, which would allow members to engage in paddlesports on club waters at times when it would not conflict with fishing and in ways which will not disturb migrating and spawning fish.

Members at the general meeting decided that canoeing members should be subject to the same sort of arrangements as fishing members, who pay membership subscriptions and have to comply with rules designed to protect the facilities and the interests of other members.

### **Our Waters**

We own or control most of the fishing in the River Tawe from Ynysmeudwy downstream to Morryston. We intend to allow canoeing members to use those waters where we are the owners or where riparian owners have given us permission to allow canoeing.

The uppermost boundary is the Cwmdu Brook, Ynysmeudwy. Then downstream both banks, to the upper limit of the Inco Recreation Ground. From the lower boundary of the Inco Works downstream both banks to the Beaufort Weir, Morryston, EXCEPT FOR:

water on the left bank between Clydach and Ynystawe owned by Ynystanglws Farm; and

water on left and right banks above Tir Canol bridge owned by Ynysforgan Farm.

Maps will be made available, showing access and egress points and those stretches where canoeing will be allowed.

The rules which will apply to canoeing on our waters can be found in our Byelaws [here...](#) (PDF, 60KB).

## Appendix P: Canoe Access Issues on the Welsh Dee.

The middle section of the Welsh Dee from Glyndyfrdwy to Llangollen town is a popular section for paddlers. There is no right of navigation on the river apart from the lower tidal section below Farndon bridge to the estuary.

Between 1968 -2006 Llangollen Angling Association (now Llangollen Maelor Angling Ltd.) granted permission for canoe events to take place on the waters in their control. These events included international slalom competitions and whitewater races. The majority of these events were run by the Welsh Canoeing Association (now Canoe Wales). Other events were run by canoe clubs such as Manchester University. The events included the Mike Jones Memorial tour which attracted large numbers of participants and spectators to the town.

In 2006 with a change of officer structure at Canoe Wales it became apparent that permission for access was not being sought. Challenging of paddlers and information from local canoe operators revealed that Canoe Wales like the British Canoe Union and Canoe England had embarked on a campaign for unrestricted access. The representatives from Canoe Wales ceased to attend annual meetings to request permission to hold events. They stopped organising tour events.

The Welsh Government's Sustainability report published in 2010 was ignored by Canoe Wales who continued to put out propaganda that there was an unrestricted right to paddle the river. They supported this view by quoting the pamphlet written by the Reverend Caffyn.

In early 2012 Corwen and District, Midland Flyfishers and Llangollen Maelor angling clubs decided to take a proactive approach to the issue of canoe trespass. The clubs arranged meetings with local canoe representatives, some commercial operators, Natural Resources Wales, representatives of Denbighshire County Council and the Area of Outstanding Natural Beauty. This resulted in the clubs granting permissive access to allow canoeing on certain areas everyday between 10 am -3pm. In addition a much larger area of river was opened up on a high water level basis. The move has been welcomed by the majority of paddlers. However it is clear that Canoe Wales have actively tried to undermine the initiative by encouraging paddlers to ignore the access permission.

The use of the river by commercial operators was addressed by offering an agreement to allow them to use inflatable kayaks, rafts and tubes in a designated two mile area between 9:30am-3:30pm. The operators pay an annual fee to a not for profit company which has been set up. That company comprises directors from both the angling clubs and canoe representatives, with the money paid by the operators to be used for river improvements. To date 4 commercial operators have signed up to the agreement. Canoe Wales were invited to join that agreement but refused to do so. Due to the undermining activities of Canoe Wales it is clear that they are not prepared to pay until action is taken.

I quote one commercial operator "I have, as I'm sure others have voiced also, issues with paying anything at the current time, whilst other users seem to be freely accessing this stretch of water outside of this agreement. Canolfan Tryweryn are not only freely accessing but are also heavily advertising trips down this stretch of river as well as Andy Turton regularly rafting. As much as I believe in this agreement, I also believe in fairness and equality. I don't think anyone should be able to raft freely whilst it is deemed others should pay. I would like to know what is being done to stop

companies outside of this agreement rafting and see some sort of action before committing my monies into it.”

The advertising referred to above by Canoe Wales is captured by a post from their UK rafting blog page.

### **Autumn Rafting**

**Posted by Megan Mcnutt at 01:10 on 14 October 2013**

Following the popularity of last years autumn rafting on local rivers, including the Dee, Vyrnwy and the Conwy, we're pleased to be able to offer these unique trips once again this year! As our shut down period has been delayed until the 31st October, these trips will run throughout November and the beginning of December. The location of the trip will be determined by suitable water levels, nearer the time.

The 3 angling clubs are committed to continuing the permissive access agreement and to keep open dialogue with local canoe representatives and commercial users despite the attempts by Canoe Wales to frustrate the process. We have the support of the County Council, NRW and AONB who all express despair at the tactics being used by Canoe Wales.

## Appendix Q: Letter from Welsh Canoeing Association to Tawe and Tributaries Angling Association

CYMDEITHAS GANŴA CYMRŪ  
WELSH CANOEING ASSOCIATION



D. Laurence Jones  
Tawe and Tributaries Angling Association  
20 Thomas St  
Pontardawe  
Swansea  
SA84HD

8/10/2007

Annwyl Laurence,  
**RE: Canoeing agreement River Tawe and Twrch**

The WCA board, in the light of recent research, membership wishes and angler representations has issued a directive that "access agreements" are unsustainable and ineffective mechanisms for managing recreational canoeing. The board have issued a mandate not to enter into such arrangements and are undertaking an audit of the existing arrangements in place.

We now recognise that due to the size and scope of paddling activity in Wales that it is incongruent for the Welsh Canoeing Association to be providers of access.

It is clear from the complaints that we have received from your association that some canoeists are in breach of the existing agreement. We also note that this also true from the in respect of some angling practitioners. It is frustrating for us that we are unable to create meaningful agreements for the benefit of all parties.

Therefore the Welsh Canoeing Association is writing to terminate its current agreement with your association for canoeing.

As we recognise that paddling will continue to take place along the rivers of Wales, we are prepared to offer resources to help secure funding for any improvements that may be beneficial to allow this to continue (items such as fencing, styles, signage and car parking). We also offer our technical expertise in allowing you to consider realistic mechanisms for managing water-based activity, in co-operation with other partners and National Governing Bodies.

We are very grateful for your co-operation during the agreement to date and hope that you will be able to find an appropriate way to manage activity on your land in the future.

If we can be of any further help, please do not hesitate to contact Ashley Charlwood on 01341 422692 (direct), who has responsibility for helping organisations such as yours in providing opportunity for canoeing.

Diolch a cofion gorau.



Richard Harvey

(Chief Executive Officer)