

## **Response to BBC Article – The Fight for England’s rivers: Canoeist call for greater access**

Canoe England would like to respond to the BBC article written by David Bailey. Whilst CE welcome David’s article highlighting many of the issues related to the access to and along our waterways we would like to clarify a number of points that have been raised within his article.

First of all, Canoe England believes and reiterates that the access debate and issues are not polarised purely between canoeist and anglers. The amenity of access to and along many watercourses is a matter of wider public interest. It also affects other recreational activities that have an interest on our inland waterways such as open water swimming and rowing; and there are the many people who simply wish to enjoy being by the water environment.

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. The recently published research by Caffyn discussed in the BBC article contests this assumption.

We must once again respond to the Angling Trust and the statement attributed to their Chief Executive Mark Lloyd who said "The law of the land is absolutely clear - there is no universal right for people to canoe on non-tidal waters.

However, Defra has very recently informed Members of the BCU *“that 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.”* (Canoe England considers a reference to this statement would have made a useful contribution to the BBC article and discussion).

Mr Lloyd also claims that the Trust encourages its members to develop voluntary access agreements with canoeing bodies to ensure that paddlers do not conflict with angling or damage fish stocks.

He goes on to say that "Unfortunately the British Canoe Union is often unwilling to support these agreements if they don't permit access at all times. The BCU also contributes to conflict by being unclear about the legal position on its website."

The actual reality is that the British Canoe Union (BCU) has endeavoured to develop VAAs (Voluntary Access Agreements) for nearly 50 years with little success. These arrangements exist on a few rivers and typically provide highly restricted and inadequate access

It is also a fact that whilst Canoe England believes in the principle for access to and along unregulated non-tidal waters it has also taken a pragmatic view to negotiate Access Arrangements as a means for shared use. Any Access Arrangements would be on a joint local management basis that helps to protect the environment and

respect the rights of other user interests. The Canoe England Position statement for Access Arrangements refers.

Government research for canoe access on the Rivers Mersey and Waveney has produced principles and a benchmark for VAAs; forming the basis of government policy for access to inland waters to be achieved by the voluntary route.

CE believes that this should be applied as the national standard for VAAs. The research has demonstrated that it is possible to achieve;

- All year round access supported by an Access Code outlining responsibilities of all water users.
- Environmental protection as appropriate eg setting mutually agreed minimum river levels.
- Respect flora, fauna, and other users
- Identified sites for launching and landing
- Publicity and information dissemination of VAAs

The canoe England Position Statement also evidences how Government policy for AA's has failed i.e. Rivers Teme and Wear.

For AAs to work they are dependent on other water users and the riparian owners commitment for secure access managed on a self regulatory management basis. It is unrealistic to expect an organisation such as CE to have powers to enforce canoeists to abide by AA's. Many canoeists are independent of CE and we encourage all to follow the guidelines of such arrangements

Finally, CE would like to comment on the opinion of Jonathan Karas QC, who says that 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," he says.

"The suggestion that there are general public rights of navigation dating from medieval times is a misunderstanding."

CE has received conflicting opinion from another QC who counters Mr Kara's views. This together with Defra's statement that there is no clear case law on whether a 'common law right of navigation' exists will ensure that the debate continues.

A thread overlooked in the BBC article are those rivers where a navigation Act remains on statute as is the case for the Hampshire Avon that is featured in David's article..