



Canoe England Access Policy Statement: 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 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.