

Voluntary Access Agreements

A Practical Guide

Introduction

Spending time in our blue spaces offers significant benefits to our physical and mental well-being as well as improving our quality of life. As a result, there is increased demand for access to our rivers and waterways. But we live on a small island and greater access to nature will likely create conflict and disputes between different users. We need to foster productive relationships with all water users in order to provide greater access to the natural environment whilst protecting our blue spaces and the interests of anglers, fisheries, and riparian landowners.

In recent years there have been increasingly aggressive campaigns for greater access for canoeists and paddlers that claim a general public right of navigation on all rivers exists, or that it should.

It is settled law that there is no general public right of navigation on non-tidal rivers in England and Wales. This is confirmed by the advice provided by David Hart KC in response to claims made by the Reverend Dr Douglas Caffyn (who is not a lawyer) in 2004 that there is a general public right of navigation, based only on the conclusions of his Masters' thesis.

This was confirmed by Defra in 2013 who stated:

"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."

Further confirmation on the lack of a public right to navigation and the importance of VAAs was given by no fewer than four separate Environment Ministers including: Barry Gardner (2007) who stated:

"Our view is that increased access to water, for activities such as canoeing, can most effectively be achieved via the voluntary approach, which involves landowners and water users coming to a formal, written agreement about access to a particular stretch of water which takes into account the needs of all interested parties."

This was followed in 2010 – by Huw Irranca-Davis and then by Richard Benyon in December 2012 who said:

"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."

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In December 2020, the Environment Secretary – George Eustice stated:

“The Government’s policy for unregulated waterways, ... is that access to rivers should be arranged through voluntary agreements between the riparian landowners, anglers, canoeists, and those wishing to use the water for other recreational purposes. Tailored to local situations, this allows for the needs of recreational users to be balanced with those of industry and conservation, as well as the property rights of landowners.

I am also aware that there are issues surrounding recreational access to some of our unregulated waterways, but the Government has no statutory role in enforcing voluntary access agreements and we have no plans to legislate on this matter.”

The Defra policy remains that:

“All waterways where there is an established right of navigation (for example those managed by the Environment Agency and by the Canal & River Trust) are open to recreational users such as canoeists. On all other waterways, access should be arranged through voluntary local agreements between land owners and those wishing to use the water for recreation. This allows for the needs of canoeists to be balanced with those of anglers, industry, and conservation as well as the property rights of landowners, tailored to local situations; so everybody can share the space harmoniously.”

The Angling Trust, as the national governing body representing all forms of angling, accepts the need for all river users to operate within the law and to share our natural resources in a spirit of cooperation and respect.

There is no general public right of navigation on non-tidal rivers in England and Wales. Where navigation is allowed this is through Acts of Parliament (and other instruments) that are specific to a river or section of a river, or other water body. If there were a general right of navigation then these Acts would not exist.

In Britain, there are 4,700 miles of inland waters where navigation is allowed. Paddling on the canal network and rivers under the control of a navigation authority is, for example, permitted although it normally requires registration or a licence. The payment of fees to a navigation authority funds maintenance of the waterway for navigation and regulation of paddling activity.

Inevitably, some activities such as fishing are not compatible with other activities on the water. This is why it remains important to have in place a system of Voluntary Access Agreements (VAAs) under which riparian owners are able to grant access to non-navigable stretches of inland waters for activities such as canoeing or paddle boarding without impacting unduly on the rights and enjoyment of other long-standing users such as anglers.

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Successive governments have been clear, canoeists / paddlers and their representative bodies should abide by the law and pursue access through VAAs with riparian owners and other water users that respect local requirements.

Experience has shown that VAAs can secure shared, conflict free access on rivers and other waters without harming the environment or fisheries, or the interests of riparian landowners. This practical guide is designed to help riparian landowners, fishery owners, fishing clubs and paddlers to draw up such agreements, taking account of all relevant interests on or adjacent to the waters concerned. It will also help others providing and managing access to water, such as local authorities. This guide focuses on the process of securing agreements, and what they should contain. It aims to give practical advice and highlight best practice.

This guide is based upon previous guides published by the Environment Agency and developed in collaboration with the British Canoe Union (BCU, now British Canoeing) the Country Landowners Association (CLA), National Association of Fisheries and Angling Consultatives (NAFAC), National Farmers Union (NFU), National Federation of Anglers (NFA), and the Salmon & Trout Association (S&TA), but it has been fully revised and updated.

Property and Access Rights

Background

The subject of land ownership, property and access rights is a complex one. An understanding of it is important for those wishing to negotiate access to non-tidal waters.

Public rights of navigation still exist in the majority of the estuaries of England and Wales and on the major non-tidal navigable rivers and canals. In some cases these rights may have been defined, limited, or organised by legislation.

However, on the majority of freshwater rivers no such rights of navigation exist.

Riparian rights

Under English law all land, including the bed of a river or lake, belongs to someone – typically a private individual, local authority, a corporate body, or the Crown. It is usually necessary to get someone’s permission for access to such land or water for fishing or paddling. If permission has not been obtained, access constitutes Civil Trespass, whether or not the owner actively enforces their rights.

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Trespass is a civil offence and trespassers cannot be prosecuted, but they can be sued for damages. The Criminal Justice Act 1994 introduced the criminal offence of Aggravated Trespass. To commit Aggravated Trespass other water users must first be trespassing, whilst trespassing they must also have the intention of obstructing or disrupting a lawful activity (such as fishing) or intimidating those engaged in such lawful activities.

Non-tidal rivers are generally owned privately. In the absence of evidence as to who owns a river, the law assumes that the river bed is owned up to the centre line by the riparian landowner. There is no ownership of the flowing water and all may reasonably use it who have both a right of access to it and a right to use it for their permitted purpose. Where such rights do not exist, the water may be used for angling, paddling, swimming, and so on, only with the consent of the owner, for example, under a lease of fishing rights or an access agreement for paddling.

Sometime rights, such as fishing rights, are not held by the riparian landowner, but have been sold to other individuals or fishing clubs.

Private rights of navigation

Navigation rights are not necessarily public rights. Private rights of navigation are private rights of passage by boat enjoyed by a limited class of persons. Such a right may be subject to conditions to avoid interference with other rights, such as fishing. A public right to navigate takes precedence over private rights, and is superimposed on them, but must itself be exercised reasonably., otherwise is interference that can be 'trespass' or nuisance.

Public rights of navigation

In England and Wales, on non-tidal rivers and lakes, the Crown is regarded as having long ago transferred the bed of the watercourse to the owners of the adjoining land, and there is no automatic right for the public to navigate. However, a public right to pass in boats can come into existence in a number of ways, for example by Act of Parliament or by express dedication.

The public right is a right to pass and re-pass (either upstream or downstream). It does not entitle paddlers to 'occupy' a stretch of water for an event, or for practice or instruction. A right of navigation (or right to fish) does not include a right of access over land from a public highway to reach the water. Nor does it give permission to land or launch except at a public landing place; such permission can be given only by the landowner.

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In general, the public right of navigation, exercised reasonably, takes precedence over other rights, including the right to fish. So, anglers must stop fishing if necessary to allow craft to pass.

In some cases the public right to navigate is exercisable only after taking out a licence or paying dues authorised by an Act of Parliament. This is the case, for example, on the Canal & Rivers Trust (British Waterways) network and on rivers where the Environment Agency is the navigation authority. Certain authorities, such as the Environment Agency, have powers to make byelaws regulating boating, or in prescribed circumstances prohibiting it (usually temporarily), on waters where there is a public right of navigation.

<https://www.gov.uk/guidance/inland-waterways-and-categorisation-of-waters#registration-and-licensing-for-vessels-operating-on-inland-waters>

<https://canalrivertrust.org.uk/enjoy-the-waterways/canoeing-and-kayaking-near-me/licensing-your-canoe>

Taking Everything Into Account

Paddlers and anglers each have a variety of requirements in order to fully enjoy their sports. Similarly, the owners and manager of rivers and adjacent land will have concerns over the way the rivers are used and the impacts that recreational activities may have upon their interests. Example requirements are outlined below.

Examples of what paddlers want

To be able to enjoy their sport, paddlers need:

- a river, lake, reservoir, or other water body with the physical characteristics that enable a canoe or paddle board to pass along it;
- the permission of the owner of the water, unless there are public rights of navigation;
- points on the bank where they can launch and land, which may involve the existence or provision of a landing stage or steps;
- a suitable place, accessible from the public road, where cars and trailers may stand during unloading and loading, and where paddlers may change;
- permission to carry canoes / paddle boards across the land between their transport and the water;
- places for parking vehicles whilst they are paddling;
- arrangements for spectators at events and sessions;
- to share facilities with other users.

Examples of what anglers want

To be able to enjoy their sport, anglers need:

- a river, lake, reservoir, or other water body suitable for the quarry species;
- access for fishing secured by agreement with the owner of the water or by purchasing the fishing rights. Purchases are often accompanied by easements for access across riparian owners' properties. Landowners may manage the use of their fishing rights themselves, allowing fishing in return for daily payments or season tickets, but the basic requirement of the owners' permission still applies;
- security of tenure, in the form of long-term leases or licences, is important in justifying effort and expenditure by clubs and associations in maintaining fisheries and providing adequate policing;
- individual anglers may often obtain permission to fish club waters by buying a day ticket, limited period permit or temporary club membership;
- places for parking vehicles;
- maintenance or restoration of the quality of the aquatic environment;

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- freedom from interference from non-authorised users, poachers or other disruption;
- undisturbed fish.

If each party to an agreement clearly understand the needs of others, a mutually acceptable agreement is more likely to result. In addition, due consideration needs to be given to the possible impacts of one recreation on another, and of recreation on the environment, so that decisions on, for example, space and time zoning can be made.

Farming and land-owning considerations

It is essential that anyone seeking to improve access opportunities should do so in ways that are sustainable. Access proposals should be modified or, if necessary, abandoned if it is clear that damaging impacts cannot be avoided. The other interests that could be affected, and the likely impacts and management measures needed to avoid or minimise them, should be assessed. All parties need to think about the wider impacts of improving access, not just those affecting fishing. What are the key considerations for owners and how can these be accommodated?

It will be necessary to find out as much as possible about the way that the water in question, and the land surrounding it, is used and managed. Major considerations for the water environment may include:

- game fishing;
- coarse fishing;
- arable farming on adjacent land;
- livestock rearing and fattening on adjacent land;
- protection of wildlife including fauna, invertebrates, mammals, birds and fish;
- ingress and spread of invasive non-native species and their impact on aquatic habitats;
- navigation, including paddling;
- wildfowling in estuarine waters;
- safety, particularly when rivers are in spate and when access to the water and banks can be dangerous;
- dogs fouling paths and towpaths or disturbing wildlife;
- conflicts between different water users;
- suitability of water quality for contact sports;
- water abstraction for drinking water or spray irrigation;
- water storage after abstraction or to regulate flows.

The landowner may have conservation projects in place, increasingly, it might be subject to various agricultural payments, local nature recovery strategies, and others.

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The above considerations are likely to fluctuate in importance with the seasons or even with the time of day, so a very detailed assessment may be required, involving consultation with representatives of quite a few bodies.

Environmental considerations

In order that recreational use of a river is environmentally sustainable, potentially harmful impacts, which may contravene the Wildlife & Countryside Act (1981) or the Salmon & Freshwater Fisheries Act (1975), need to be recognised and action taken to avoid damage.

Disturbance to wildlife: Management techniques to avoid or minimise disturbance include zoning sections of bank or water space, close seasons, codes of practice and the provision of information to raise awareness of local wildlife.

Disturbance to spawning fish: Spawning fish are vulnerable to disturbance and the gravels or plants upon which they spawn can be damaged by water users. Conditions that render spawning liable to disturbance are likely to vary from river to river, however, as are the spawning periods of different fish. Guidance should be sought from Environment Agency Fisheries Officers on spawning periods, susceptible stretches, and water levels below which the risk of disturbance increases. As susceptible stretches and flows are identified paddlers representatives should be informed.

Obstructions to migratory fish: The presence of paddlers near obstructions such as weirs, through their presence in relatively confined channels through which migratory fish must pass, may act as a deterrent to their passage and congregation in these areas should be avoided.

Erosion: Riverbank erosion can be managed by controlling access and egress points for paddlers and providing dedicated pegs for angling.

Litter: Litter poses a risk to wildlife and livestock, and all recreational users must take litter and debris home with them.

<https://anglingtrust.net/get-involved/anglers-against-litter/>

<https://www.britishcanoeing.org.uk/go-canoeing/access-and-environment/environment-good-practice>

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Invasive non-native species: Invasive non-native species are one of the top five drivers for biodiversity loss worldwide and present a huge threat to native species and aquatic environments. Invasive species can be spread between water bodies in a variety of ways. One of these includes accidentally carrying species on clothing, canoes, paddle boards and paddling gear. Rigorous 'Check Clean Dry' procedures can help to reduce the risk of transferring invasive non-native species.

<https://anglingtrust.net/invasive-non-native-species/>

<https://www.britishcanoeing.org.uk/go-canoeing/access-and-environment/invasive-non-native-species>

How To Reach An Agreement

It is important that all negotiations are conducted with tact and diplomacy, and all parties should try to understand the point of view of others. Simple agreements that are developed collaboratively and jointly policed are likely to be the most effective and the most efficient in practice. A fait accompli agreement dictated by the landowners with no give and take by the involved parties is unlikely to succeed and should only be used as a last resort.

Before engaging other parties riparian owners and angling clubs should first establish their own position in terms of ownership, access rights, leases or licenses and ensure that these are clear and agreed.

The first challenge can be establishing landownership and existing access rights across the extent of the access agreement. There is no fool proof way of finding out who owns a piece of land, enquiring at adjacent farms can be a good way to start. Other sources of information on land ownership include the local offices of the Country Landowners Association (CLA), the National Farmers Union (NFU), Environment Agency (EA), Natural Resources Wales (NRW), the Canal & Rivers Trust (CRT), and parish councils. Representative of local angling clubs and the Angling Trust may also be able to help.

CLA - <https://www.cla.org.uk/in-your-area/>

NFU - <https://www.nfuonline.com/regions/>

EA - <https://www.gov.uk/government/organisations/environment-agency/about/access-and-opening>

NRW - <https://naturalresources.wales/about-us/jobs-and-placements/jobs/our-offices/?lang=en>

CRT - <https://canalrivertrust.org.uk/about-us/where-we-work>

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Parties to the agreement

There are two broad types of written agreement:

- an exchange of letters, minor amendments may be made by exchanging letters each year if necessary, in the light of experience;
- a more formal written agreement where all the conditions and privileges are precisely set out after all parties have agreed the details. This agreement should then be signed by, or on behalf of, each party to it. Various organisations have model access agreements which could offer a starting point for a new access agreement.

Written ‘gentleman’s’ agreements are the cheapest and the most efficient in practice. They work best when few parties are concerned, preferably one person acting for the paddlers and one for the riparian landowners. It should be possible to establish such agreements without seeking legal advice, but this option remains open to any party at any time.

Some agreements may need to involve many parties, riparian owners, other landowners, fishery owners, angling tenants, local paddling clubs and their representative bodies. The Environment Agency or Natural Resources Wales may need to be party where local byelaws apply (for example, fish passes and obstructions). Where statutorily protected areas such as Special Areas of Conservation, Sites of Special Scientific Interest or similar are likely to be affected, Natural England, Natural Resources Wales or any National Park authorities should be consulted. Where there are many parties to the agreement, it may be necessary to call a meeting with an independent chair. This should be publicised locally to attract any interested parties who may not already have been identified. Sport England offices may be able to suggest an independent chair. The Environment Agency or Natural Resources Wales may also help to bring the various parties together and to mediate between them.

Sport England - <https://www.sportengland.org/contact-us>

Aspects to consider for inclusion in the agreement

The following describe matters that should be considered by those negotiating an access agreement. The list should not be considered exhaustive, as other issues specific to individual sites may need to be included. However, as suggested above, it is important to try to keep things simple.

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1. Ownership

Describe ownership and tenancies of the stretch of the river, and of adjacent land where its use is necessary for access / egress. An annotated map, with an accompanying schedule of contact details for owners / occupiers / lessees, is a clear way of depicting much of this information.

2. Time and date restrictions

In some circumstances paddling and angling at the same time may be incompatible. In those cases it will be necessary to detail the dates when paddling is permitted. These may include:

- the fishing close season – specify dates;
- when the river is running brown in spate and unsuitable for angling – give details of where spate level is measured and how level information can be obtained;
- when the river is above a specific level – give details of location of gauges, levels and how level information can be accessed;
- during the fishing season when angling is poor – specifically define “poor fishing” and set out how this information can be obtained;
- special dispensations to enable long-distance paddle journeys to take place where access arrangements preclude continuous passage;
- times when paddling can take place;
- times when both angling and paddling can take place;
- special arrangements for competitions or on other specific occasions.

3. Spatial zoning

Describe any arrangements for spatial zoning, such as areas that will be out of bounds to paddlers during the nesting season or spawning period.

4. Areas of special interest

Detail any arrangement for access to specific locations, such as for initial instruction and placid water paddling.

5. Numbers and categories of craft

Set out any limitations as to the numbers of paddlers per day or the size of groups and/or types of craft permitted. Is the agreement only for canoeists, or does it also include paddleboarders, inflatable rafts and commercial rafting? This may be in addition to, or instead of, date or other restrictions.

6. Payment

Describe any payment required from members for booking a place on the river. This could contribute to the management of the access arrangement or to the provision of facilities that enable the access, such as stiles or landing point.

Mention any schemes under which public access is being provided to the water or adjacent land (for example Countryside Stewardship, Countryside Access Scheme, Capital Tax exemption arrangements) and how, if at all, this affects access for paddling or angling.

7. Membership restriction

Make it clear whether the agreement covers canoeists who are not British Canoeing / Canoe Wales members. If payment has been made, identification may be required by a British Canoeing identification sticker on each canoe or paddleboard, supported by paddlers carrying their membership cards and/or helmet tags.

8. Access and egress points

Stipulate that, except for emergencies, paddlers will embark or disembark only at specified places agreed by the riparian owners(s). Passage across adjacent land to roads or public rights of way may need to be agreed.

9. Parking facilities

Give details of parking provision for cars and minibuses near access and egress points. If special access needs to be permitted for paddling purposes, it may be appropriate to introduce some vehicle identification. A setting-down point for loading or unloading paddling craft could be specified, with a car park further away.

10. Safety

Specify that paddlers must wear appropriate safety gear and hold appropriate public liability insurance cover for damage to property and injury or death to third parties.

Paddlers must recognise their sport is dangerous and take responsibility for their own safety and comply with the safety standards, for example by making themselves aware of the local flood warning systems (which could be sited in the agreement).

<https://www.britishcanoeing.org.uk/guidance-resources/safety-1>

11. Legal rights

State that all the parties accept that the arrangements are without prejudice to contentions by themselves or others as to the existence of public navigation rights or the water in question in the present or the future. They are made without prejudice to the legal position so that paddling may take peacefully and without objection by the riparian and fishery owners and any tenants who are parties to the agreement.

12. Policing and discipline

State how the parties to the agreement will police the agreement. This should not fall solely on the shoulders of the angling club or fishery / riparian owners.

Detail action to be taken against paddlers or anglers who act in breach of the agreement or certain elements of the agreement, for example disqualification from British Canoeing or local fishing club. State that use of the river(s) by an individual (whether a member of a contracting body or not) in a manner that breaches the terms of the agreement will be ordinary trespass, which is a civil wrong and may be dealt with through the County Courts.

13. Code of conduct

Include a code of conduct for paddlers. Reference can be made to established national codes such as the Countryside Code, Canoeing Code (Wales), and British Canoeing good practice:

Countryside Code for England - <https://www.gov.uk/government/publications/the-countryside-code/the-countryside-code-advice-for-countryside-visitors>

Countryside Code for Wales - <https://naturalresources.wales/days-out/the-countryside-codes/the-countryside-code-advice-for-countryside-visitors/?lang=en>

Welsh Canoeing Code - <https://naturalresources.wales/days-out/the-countryside-codes/the-canoeing-code/?lang=en>

British Canoeing Environment and Good Practice - <https://www.britishcanoeing.org.uk/go-canoeing/access-and-environment/environment-good-practice>

Example Code of Conduct from the Welsh Dee - http://www.welshdeepartnershipltd.co.uk/code_of_conduct

14. Publicity

Set out how paddlers will be advised of the conditions of the agreement and provide details of any signs to be provided on or near the site.

Examples:

Welsh Dee - http://www.welshdeepartnershipltd.co.uk/river_access

Usk - <https://www.wyeuskfoundation.org/upper-usk-access-arrangements>

Welsh Wye - <https://www.wyeuskfoundation.org/upper-wye-access-arrangements>

15. Angling and fishing rights

Set out existing arrangements for fishing on the river. This helps to put the paddlers 'in the picture'. Typical content might include:

- type and style of fishing;
- fishing season;
- routes anglers may take across the owner's land;
- car parking areas;
- any obligations on the holders of the fishing rights to maintain the quality of the fishery and to take reasonable steps to prevent or report pollution;
- special terms of access for fishery management purposes.

Ensure that leases are checked, and revised as necessary, with the agreement of lessees, to provide for paddling taking place.

16. Conflict avoidance and resolution

Regular meetings can help to avoid conflict arising. Where conflict arises specify how disagreements over the operation of the agreement should be resolved. This could be achieved through a meeting, perhaps involving a mediator acceptable to all the parties to the agreement.

17. Termination

Specify the basis on which an agreement may be terminated. Provision should be made for advance notice of termination, to avoid uncertainty and hence conflict.

18. Period and review

State the dates between which the agreement runs and establish a date (before the agreement runs out) for it to be reviewed. An annual meeting to maintain face-to-face contact and to provide an opportunity for discussing any concerns raised by the parties is advisable.

19. Signatories

All parties involved in the agreement and everyone who has a legitimate interest in the water and land concerned must be signatories to the agreement. Otherwise, people who have such interests but are not signatories will not be bound by the terms of the agreement.

Liabilities

Public Liability Insurance normally accepts that there may be property owner/occupier liability exposures arising for those who own the land or occupy the land where angling activities takes place. As a result the insured riparian owners / angling clubs have a duty of care to reasonably ensure the safety of those visitors to the land they own or occupy. It is important that riparian owners / angling clubs understand their duty and therefore the risk management measures they should be undertaking to ensure the safety of those who may be on the land for which they are responsible. Improved risk management can significantly assist with defence should allegations for negligence arise.

If the use of the land/waters is extended to beyond the angling activity covered, riparian owners / angling clubs need to ensure those undertaking other activities on their waters, such as open water swimming, canoeing or paddle boarding, are also taken into account when considering risk assessment and risk management.

Before entering into any Voluntary Access Agreement it is vital to check for liability issues and mitigations with the insurers.

Maintaining The Agreement

With so much effort expended in securing an agreement, one aim must be to ensure that its use is as trouble-free as possible for all parties. Everyone should take steps to ensure that the stipulations within it are adhered to as closely as possible. It will be important to devise effective ways of distributing up-to-date information to potential users of the waters concerned, so that they are clearly aware of what they can and cannot do, and where and when the water is available for use. If there are any changes to arrangements, for whatever reason, this information needs rapid distribution as well. It may also be necessary to maintain close contact with Environment Agency Fisheries Officers if there is potential conflict with spawning grounds.

Continuing regular liaison between the parties to the agreement should be sought so that any unforeseen problems can be ironed out or any special circumstances responded to quickly. On the basis of this liaison, it should then be possible to update and revise the original agreement in any ways necessary to ensure that there is no obstruction to the agreement's renewal.