

Voluntary Access Agreements

An Introductory Guide



Introduction

Significant benefits to our physical and mental well wellbeing as well as improvements to our quality of life arise from spending time in nature and as a result, there is increased demand for access to our rivers and waterways. But greater access to nature often creates 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. Successive governments have been clear, canoeists / paddlers and their representative bodies should abide by the law and pursue access through Voluntary Access Agreements (VAAs) with riparian owners and other water users that respect local requirements.

The Defra policy is clear:

“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.”

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 introductory guide provides an overview of the key components of, and considerations for drawing up, VAAs.

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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:

- suitable waters;
- permission;
- suitable access and egress points;
- access from the public road, for unloading and loading;
- places for parking vehicles;
- 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:

- waters suitable for the quarry species;
- access for fishing secured by agreement;
- security of tenure;
- permission to fish;
- places for parking vehicles;
- maintenance or restoration of the quality of the aquatic environment;
- freedom from interference from non-authorized 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.

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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.

These may include:

- disturbance to wildlife;
- disturbance to spawning fish;
- obstructions to migratory fish;
- erosion;
- litter;
- 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.

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.

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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.

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.

- Ownership
- Time and date restrictions
- Spatial zoning
- Areas of special interest
- Numbers and categories of craft
- Payment
- Membership restriction
- Access and egress points
- Parking facilities
- Safety
- Legal rights
- Policing and discipline
- Code of
- Publicity
- Angling and fishing rights
- Conflict avoidance and resolution
- Termination
- Period and review
- Signatories

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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

Everyone should take steps to ensure that the stipulations within the VAA 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.

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.