

Additional information to accompany Waters of Wales – WoW Petition:

P-05-717 Establish Statutory Public Rights of Access to Land and Water for Recreational and Other Purposes currently with the Petitions committee.

Failure to secure public access to the countryside, including inland water, by voluntary agreement, and the need to legislate.

Following a petition for Land Reform submitted in 2008, the petitions committee conducted a short Inquiry and recommended that:

“... [legislation] would provide clarity, certainty and permanence and we believe that the Land Reform (Scotland) Act 2003 provides a basis from which a unique Welsh model may be developed. ...”ⁱ.

Welsh Government chose not to follow these recommendations and embarked on a process of facilitated and mediated voluntary negotiations. The project was an expensive failure, but in spite of overwhelming evidence to the contraryⁱⁱ, some people continue to assert that public access to the wider countryside, including water, can be sustainably achieved by voluntary negotiation.

This summary sets out briefly why we believe that the proposed legislation is the only solution to the problem of meeting the need for public access. We focus on inland water, but the principles can be applied to all water and land where public rights of access are disputed.

Background.

Historical evidence shows that until very recent times, the public enjoyed unfettered access to, and navigation of, inland water for a variety of recreational activities, including swimming, boating and skatingⁱⁱⁱ.

Challenges to access and navigation arose in the 20th Century, and the newly-formed British Canoe Union (BCU), responded by trying to negotiate access ‘permission’, to avoid conflict and secure sites needed for canoeing. Internal BCU records show that many people advised against this, saying that the policy would ‘do more harm than good’^{iv}.

As people started trying to negotiate permission in response to challenges on waters which they had previously enjoyed unfettered by restrictions, an assumption spread that permission was needed to navigate inland water. A vicious circle was largely if not wholly created by the first, misguided, attempts to resolve occasional local issues by adopting a position of inequality in the face of hostility.

Voluntary negotiation has been tried repeatedly, over decades, and failed.

For about 50 years, scores of people and groups ranging from volunteers supplemented by paid officers of representative bodies, to officials of organisations such as Environment Agency/NRW, National Parks, Forestry and local authorities, attempted to negotiate voluntary agreements to enable the public to enjoy wider access to land and water without experiencing hostility, abuse or violenceⁱ.

The huge volume of records from official meetings for canoeing alone, on only a few riversⁱⁱ, represents only a small fraction of the effort expended, with little, if any, return, on the wider effort to enable the public to enjoy our natural heritage in peace, and illustrates the amount of time and money spent without getting any closer to resolution. Even on Forestry Commission land, Welsh Government ‘exemplar projects’ failed to achieve sustainable public access to water!ⁱⁱ

In 2008 WCA wrote:

*“... officers, volunteers and participants have been threatened, intimidated and marginalised in a bid to secure public recreational access. This unfortunate scenario continues today. Attempts by other parties to secure access via voluntary means have not been successful in that the resultant arrangements are not fit for purpose. This is as true for the recent Welsh government pilot projects as it is for the Brighton University projects carried out in England”.*ⁱⁱⁱ

In 2017, following another round of Welsh Government sponsored ‘pilot projects’, the above statement could be used verbatim. Only the amount of public money wasted has changed.

Welsh Government took ownership of the problem when it embarked on a process based on the ‘Splash’ programme^v.

“...the setting up of voluntary access agreements by landowners” ... “that SPLASH funding be targeted at these pilot projects” ... “the effects of the pilot projects should be closely monitored and the outcomes widely disseminated.”^{vi}

The Dee is an example of the ‘Splash’ pilot rivers. Recent history of the River shows that vast attempts at negotiation, much of which were initiated or ‘brokered’ by EA/NRW, failed to achieve a sustainable agreement.ⁱⁱ Following the Sustainability Committee report, the Dee became one of Welsh Government’s flagship projects. It is not always easy to identify exactly how SPLASH funding has been allocated, but figures show a sum of £25,700 for the Dee, an unspecified amount of which was spent on setting up the Welsh Dee Partnership (WDP) and ‘agreement’ for use of the river.^{vii}

The ‘agreement’ set up by the WDP has been criticised by recreational paddlers, swimmers and many others: even photography is among the activities highlighted for restriction in the partnership’s ‘agreement’. There have been threats, unsuccessful attempts to have river users charged with criminal offences^{ix}, and an attempt to “Close the river” to canoeists by erecting a dangerous barrier from one bank to the other^x. Anecdotal evidence suggests that vandalism of users’ vehicles, abuse and threats against river users is not uncommon. 2017 began with a case against a paddler alleged to have travelled along the river outside the ‘permitted’ terms.

BBC News 21 November 2004 – **Canoeist Demo over river access**^{viii}

Mail Online 27 June 2008 – **Canoeist is arrested, held for two hours, and has his DNA taken, all for the ‘crime’ of paddling down a river.**^{ix}

BBC News 31 July 2008 – **No charges for fees row canoeist**^x

Daily Post 8 September 2014 – **Row over River Dee access rumbles on despite new arrangements. ‘Landmark agreement over use of water in Llangollen area, but issue over access rights remains unresolved.**^{xi}

BBC News 17 May 2016 – **Row breaks out over rights to use Llangollen’s River Dee**^{xii}

Clearly, the Dee cannot be described as a success story. The Wye ‘agreement’ was a ‘rubber-stamping’ of a previous arrangement between specific parties, which has been largely rejected by the public, and a similar history could be described, space permitting.

With Government backing, facilitation and mediation, why did voluntary agreement by negotiation fail?

Failure is built into the process, and is therefore inevitable.

Anyone involved in the process of attempting to negotiate public access soon became aware that all the effort and expense was doomed to failure because negotiations were predicated an assumption that one party had an automatic right to present the terms and a right of veto.

In 2007 Church et al published their research: **Negotiating Recreational access under asymmetrical power relations: the case of inland waterways in England.**^{xiii,xiv} Their findings confirm what everyone with experience of negotiating public access by voluntary agreement, whether volunteer, paid officer or government official, already knew: it is the very issue of “sharing” that causes conflict, because the weaker party have little power to secure fair and equitable access through voluntary agreements.

Do voluntary agreements have a role in public access arrangements?

Yes. Following legislation to recognise and enshrine equal rights and responsibilities of all, the way will be open, when need arises, for genuine, meaningful and equitable local agreements.

Conclusions:

Attempting to secure public access by voluntary agreement by negotiation is the cause of the problem, not the solution.

Clearly voluntary negotiation for public rights is beneficial to those with an interest in preventing or restricting public access. However, as has been outlined in research and demonstrated in practice, the strategy fails to deliver the access needed by the public, does nothing to resolve conflict, and can exacerbate it.

If we continue to repeat the process that has consistently failed over six decades, it is unreasonable to expect success. Success in resolving similar issues has, however, been recently demonstrated, in Scotland.

Figures supplied by the Scottish Government^{xv} show that legislation and implementation of land reform, including TV campaigning and public education, cost £3m. This compares well with the amount spent on water-related recreation alone, on a 5-year process which simply repeated, at the taxpayers’ expense, the same failed strategy which has failed the people of Wales.

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http://www.assembly.wales/NAfW_Documents/canoe_inquiry_report__with_cover__e_.pdf_2014042009/canoe_inquiry_report__with_cover__e_-English.pdf

ii WCA Petition Committee 2008 summary of evidence:

https://1drv.ms/b/s!AvvhfAJqO9K8gdhPif_UwBYzMaHuzw

iii There is a considerable body of evidence on this subject. A summary of which we can make available if required.

iv Canoe Wales (formerly Welsh Canoeing Association – WCA) Archives

v https://dl.dropboxusercontent.com/u/62377602/Inquiry-into-Access-to-Inland-Water-in-Wales-Committee_Report-2010-06.pdf

vi https://dl.dropboxusercontent.com/u/62377602/Inquiry-into-Access-to-Inland-Water-in-Wales-Committee_Report-2010-06.pdf

vii http://news.bbc.co.uk/1/hi/wales/north_east/4030685.stm

viii http://news.bbc.co.uk/1/hi/wales/north_east/4030685.stm

ix <http://www.dailymail.co.uk/news/article-1029813/Canoeist-arrested-held-hours-DNA-taken--crime-paddling-river.html>

x <http://news.bbc.co.uk/1/hi/wales/7535626.stm>

xi <http://www.dailypost.co.uk/news/north-wales-news/row-over-river-dee-access-7731861>

xii <http://www.bbc.co.uk/news/uk-wales-north-east-wales-36306201>

xiii Executive Summary of Church et al 2007 <https://1drv.ms/b/s!AvvhfAJqO9K8gdhJfolxLXQXvN7jmQ>

xiv Church et al, 2007 Negotiating Recreational Access Under Asymmetrical Power Relations: The Case of Inland Waterways in England, Society and Natural Resources, 20:213-227 Full Paper.

<https://1drv.ms/b/s!AvvhfAJqO9K8gdN7q6GnKOUvOOUBdQ>

xv LAND REFORM (SCOTLAND) BILL-EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)
http://www.scottish.parliament.uk/S1_Bills/Land_Reform_Scotland_Bill/b44s