Dear Paul,

I am writing regarding the recent BBC article on navigation and the BCU’s response which has been posted on your web site. I would particularly like to highlight the comments in the article by a highly experienced and respected QC on the matter of the law of navigation.

Please see below an extract from the article with some important sections underlined:

"LEGAL MISUNDERSTANDING

Canoe England (part of the BCU) funds a Rivers Access Campaign which is campaigning for a public right of access to rivers. Spokesperson Tamsin Phipps says: “We are not in favour of access agreements. They haven’t worked over the last 50 years. It’s not just a canoeing versus fishing debate. It’s about fairness and shared use of waterways, about how we best use this small country we’ve got.

A Defra spokesperson says: “2,000 miles of canals and rivers that we have entrusted to the Canals and Rivers Trust are open to BCU members. Canoeists wishing to use other waterways can work with the landowner to agree access. Its right that these decisions are made between local people, according to their area’s own recreational, business and conservation needs, rather than by central government. We have no plans to change the current rules on access”.

Dr Caffyn thinks the only way to resolve what canoeists believe is the unclear legal situation in England and Wales is for a case to be brought to court...

Would it be worth the fight? One barrister, Jonathon Karas QC, says the legal starting point is that there is no general right to navigate on non-tidal rivers. They are owned as part of the land through which they pass... The suggestion that
there are general public rights of navigation dating back from medieval times is a misunderstanding.”

We will be highlighting the points below to the Minister for the Natural Environment and Fisheries and the Minister for Sport when we meet with them both in October to discuss the BCU's conduct regarding canoe access. Please respond directly to these points as soon as possible so that we can be clear about your position before we meet with them.

1. Your spokesperson has publicly acknowledged that the BCU does not support the government policy of increased access for canoeists via consensual access agreements with pre-existing users. Defra supports consensual access arrangements, and there is no prospect of a change in the law. Do you think that this is acceptable behaviour for a National Governing Body in receipt of public funding?

2. 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 to use waterways, or to obtain the right to do so by buying such a right from that landowner. We have explained this to you many times. Our position has now been independently confirmed by Jonathon Karas QC, who explicitly states that the idea of an ancient public right of navigation is a misunderstanding of the law. This publicly and independently discredits your position on this matter; neither Fish Legal nor the Angling Trust has had any previous contact whatsoever with Jonathon Karas QC. If you have contrary legal opinion, as you infer, then please make that available to us urgently so that we might debate it.

We urge you now to accept publicly the law on navigation, and to start working constructively with other users such as anglers to draw up voluntary access agreements so that paddlers and others can benefit from increased lawful access to water in this country. You are of course entitled to continue campaigning to change the law, despite the government's clear indication that it has no intention of changing it, but we believe it is utterly irresponsible for your organisation to continue to deny that the law is anything other than clear on this matter.

Your apparent policy of refusing to allow local canoe clubs to sign agreements with riparian owners and angling clubs unless they are for all-year round access is preventing your members and many other paddlers enjoying legal access to water. We have written evidence of your national officers ordering your regional staff not to sign access agreements unless they are for access at all times and unless it is made clear that they are only binding on local canoe clubs, and not on other visiting paddlers.

One canoeist who – judging by the documents he served on us - was inspired by the Reverend Caffyn's arguments (which you also seem to support) tried to challenge one of our member clubs on these points of law, and to extract money from the club, because the access agreement they had reached with local canoeists did not allow access at all times. We believe that the BCU's continued denial that the law is clear has encouraged this individual to pursue this utterly flawed case
(which he was forced to withdraw when Fish Legal defended it) and also to make spurious threats to other law-abiding angling clubs.

It is our strongly held belief that your current policy, and the behaviour of your officers, are leading directly to conflict on riverbanks, expensive and pointless legal action, unwitting illegal activity by paddlers which is damaging the property rights of our members and, ultimately, less access to water for your members. You may not like the law, or the government's policy, but it is your responsibility to respect them both.

I look forward to hearing from you with regard to my numbered points as soon as possible. I would be very happy to meet up with you to discuss how we might jointly promote voluntary access agreements, but it would be pointless to do so unless you accept the legal position that makes those agreements necessary.

Yours sincerely,

Mark Lloyd
Chief Executive
Angling Trust & Fish Legal