

Email to Dan Rogerson MP
Parliamentary Under Secretary of State for Water, Forestry, Rural Affairs and
Resource Management
29 Jan 2015
ps.dan.rogerson@defra.gsi.gov.uk

Dear Mr Rogerson,

I am a Director of River Access For All Ltd which exists to research and campaign for recognition of public navigation rights on all rivers in England and Wales, subject only to the physical constraints of the river and the size of the vessels navigating them.

Your Department has previously said to me (email of 7th February 2013, from Sarah Hill, Customer Contact Unit)

"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".

On going research has revealed the case of *The King v Clark*, 1702, (12 Mod 615; 88 ER 1558) which established

"And per Holt, Chief Justice, to hinder the course of a navigable river is against Magna Charta, c. 23, and anything that aggravates the fact, though not directly to the issue, may be given in evidence upon it; as here the taking of money to let people pass. And it is no exception to a witness here, that he contributes to carry on the suit, or that this public nuisance (sic) was to his private nuisance (sic)."

This year sees the celebration of the 800th anniversary of Magna Carta and has naturally attracted academic comment on Magna Carta, Clause 33 (clause 23 in post 1215 versions) and the protection of public navigation rights which it embodied. In a lecture to the All Party Parliamentary Group on the Constitution, 26 February 2013 (see page 2), Professor Nigel Saul, Professor of Medieval History, Royal Holloway University of London said *"Magna Carta , clause 33 was to be of enormous significance in the history of navigation in this country, because it established the principle of free passage along England's rivers, so laying the foundations for transport development in the Industrial Revolution."*

The Magna Carta Project academic commentary on Clause 33 (at the end of section (b)) confirms that this applied to all rivers -

"Londoners came to believe that this could only be achieved if they had the control of the whole of the Thames. The Charter did not make this sweeping concession, but repeated John's prohibition, without a penalty clause, and extended it to all English rivers."

The attached document also looks at the evidence from statutes and Royal Commissions operating under these statutes and shows clearly that the public navigation rights were not subject to any limitation based on their tidal or non tidal nature or the size/status of rivers as part of a limited group of "Great Rivers". The evidence from statute, Royal Commissions, case law and academic research all confirms the existence of public navigation rights in all

rivers subject only to the practicality of navigation and the size/nature of the craft able to navigate.

Public navigation rights can only be modified or extinguished by Parliament, either directly or through delegated powers. There has been no such “due legal process” to change the law (if there had been, lawyers or historians could say what it was) so the same public navigation rights must still exist today.

In Scotland, which never benefited from Magna Carta itself, public navigation rights are enshrined in modern legislation (*Land Reform (Scotland) Act, 2003*). It's time that the same certainty is restored to England and Wales as originally intended by Magna Carta, Clause 33 (Clause 23 in subsequent versions).

In 1215, Magna Carta was a sham. King John had no intention of observing the agreement and within weeks he had petitioned the Pope to have it annulled. When we celebrate the 800th anniversary in June, will Defra be honouring the spirit and intent of Magna Carta over the centuries by upholding “*the principle of free passage along England's rivers*” referred to by Professor Nigel Saul, or paying lip service in the style of King John?

Regards

Keith Day
Director, River Access For All