

# An open letter to Michael Gove

The Rt Hon Michael Gove MP  
Secretary of State for Environment, Food & Rural Affairs  
Seacole Building  
2 Marsham Street  
London SW1P 4DF

Dear Mr Gove

## Access on rivers

Rowers, paddlers and swimmers would like to have the same right as horse riders and walkers to know where they can legally enjoy their recreation. Since 1982 the public know where they may legally ride and walk by consulting the definitive maps. There is no such map for rivers. Some rivers are public, some are not.

The Angling Trust have many quotations from the 19th and 20th centuries saying that the only rivers which are public are those on which there is historic evidence of use. However, recent research has shown that in medieval times there was no restriction on the use of rivers for navigation and that this public right has not been extinguished.

The antagonism which this difference of opinion has caused has been increased by scandalously incompetent letters written by Fish Legal (see report below). Fish Legal has the same chief executive as the Angling Trust.

At present, as for the past twenty years, the Government policy is that the use of rivers should be arranged by local agreements. This has been an almost total failure because the anglers and the owners of fisheries claim the right to dictate the terms of any such arrangement (see report below). Nearly all such proposals have involved limiting the times and places when boating and swimming can take place. There is no organization with the authority to agree any limitation of such activities nor is there any organization to police such a limitation.

Fish Legal provides inaccurate and aggressive advice to those representing the interests of anglers and so the goodwill required in any negotiations is absent.

The Government is requested to change its present policy and take action to ensure that the law is clarified so that rowers, paddlers and swimmers know where they can legally enjoy their recreation.

Yours sincerely

DJM Caffyn

## Fish Legal and the Sussex Ouse

### Summary

This report considers the accuracy of one letter concerning the Sussex Ouse written by Mr Hogg, a solicitor employed by Fish Legal, to Mr Chris Page, Waterways & Environment Officer, British Canoeing, dated 30th January 2018. In the letter Mr Hogg shows that he does not understand the Ordnance Survey conventional signs used in connection with rivers. He seeks to establish a bogus claim to historic rights. He ignores at least three statutory provisions. He quotes with approval an anonymous QC who disagrees with statements by judges in the Appeal Court and the House of Lords. The letter shows that he failed to organize an appropriate search of the historic records.

There are three Statutes concerning the River Ouse upstream of Lewes (1790 30 George III. c. 52; 1806 46 George III. c. 122; 1814 54 George III. c. 176).

### The tidal section of the Ouse from Lewes to Barcombe Mills

Mr Hogg wrote:

The EA's reference to the tidal limit is fundamentally flawed. Except in unusual conditions, it rarely reaches Barcombe Mills. Historical maps confirm this. The 1878, 1899, 1911, 1956 and 1958 OS maps, together with the '2017 OS master map' all show the 'Mean High Water' to be at Hamsey Weir (well below Barcombe Mills). Local knowledge confirms this. The tidal range has extended upstream due to weir alterations and dredging in the 1970s... In any event only particularly high springtides reach as far as Barcombe Mills, aided by storm surges and the like.

Mr Hogg does not specify the scale of the maps he is referring to so it is not possible to readily identify them. However, comparison with other Ordnance Survey maps of the same periods shows that Mr Hogg has misunderstood the maps. 'Mean High Water' does not indicate the place along the river to which mean tides reach but it shows the width of the river at mean high water.

Thus, on the 1999 Ordnance Survey map at the scale of 1:25,000 the words 'Mean High Water' are printed on both banks of the river just downstream of Hamsey weir. This section of the river is denoted by a strip of blue bounded by a dark blue line on each side of the river which is the mean high water line. Downstream, above the confluence with Glynde Reach and also near South Heighton, the letters 'MHW' are printed adjacent to the mean high water line on both sides of the river. On Glynde Reach the letters 'MHW' are printed on one side of the river only. The letters 'MHW' stand for 'Mean High Water' and indicate to the user of the map that the dark blue line indicates the limit of the water across the river at mean high water. At the weirs at Barcombe Mills the two dark blue lines join and the letters 'NTL' are printed. These indicate the 'Normal Tidal Limit', the point to which the tides flow up the river. Upstream of Barcombe Mills the conventional colour, blue, for the river is bounded by thin blue lines. These are the normal conventional sign for the banks of a non-tidal river. Thus, the modern Ordnance Survey maps show that the tidal limit now to be at Barcombe Mills and not at Hamsey as stated by Mr Hogg.

In the early 20th century the tide was stopped at Hamsey Weir by the weir. The Ordnance Survey maps of the period show this.<sup>1</sup> The 1963 Ordnance Survey 1:63,360 map shows the 'High water mark of Medium Tides' as a thick black line on both banks of the river. These words, or the initials HWMMT, are printed on both banks below Hamsey Weir and other points downstream. The thick black lines end just below Barcombe Mills to be replaced by thinner lines. This indicates that the river was non-tidal above that point.<sup>2</sup>

The present location of the tidal limit is confirmed by the Crown Estate 'Foreshore and Estuary' map which shows that the Crown Estate ownership of the bed of the river ends at Barcombe Mills.<sup>3</sup> The Crown Estate owns the bed of many tidal rivers and on these there is a public right of navigation.<sup>4</sup> In general, the Crown Estate does not own the bed of non-tidal rivers. The Adur & Ouse Rivers Trust also consider that the Ouse is tidal to Barcombe Mills.<sup>5</sup>

Mr Hogg also wrote 'The legal presumption about the usual tidal range does not apply if the part of the river concerned is only affected by extraordinary tides: *Reece v Miller* (1882) 8 QB 626.' But in this case Grove J, in giving judgement, also said that for a spot to be tidal it 'must be one where the tide in the ordinary and regular course of things flows and ebbs.' Spring tides occur 'in the ordinary and regular course of things'. The water ebbs and flows at the base of the weirs at Barcombe Mills at Spring Tides. The water is thus tidal and so navigable.

Mr Hogg also wrote:

Even if the tide typically extended above Barcombe Mills (which it does not), that would not change the pre-existing legal position or private rights acquired while the tidal limit was lower downstream. The usual presumption (that there is a PRN on tidal waters based on Crown ownership and presumed grant of rights to the public; such as to navigate or fish) may be rebutted by eg evidence of private ownership. OAPS has evidence of a fishery at Barcombe Mills dating back to before 1237. Several other private ownerships upstream of Hamsey Weir, like OAPS's freehold fishing rights, are not affected by any such change in the upper tidal limit.

Mr Hogg claims that OAPS have evidence of a fishery and that this implies it owns the freehold, which implies that it owns the right of navigation and so there has been no public right of navigation above Hamsey Weir since before 1237.

This is incorrect because the preface to the 1790 River Ouse Navigation Act stated that:

Whereas the amending and improving the Navigation of the River Ouse, in the County of Sussex, through the several and respective Parishes of All Saints in the Town of Lewes, Saint John's under the Castle of Lewes, Saint Tomas in the Cliffe, near Lewes, Southmalling, Hamsey, Ringmer, and Barcombe, in the said County, would be very beneficial, and of great Utility to the Publick: And whereas the continuing and extending the Navigation of the said River |Ouse, from Barcombe Mill, in the Parish of Barcombe aforesaid, to a certain Bridge, called Hammer Bridge, situate in the Parish of Cuckfield,...