

Somerset Rivers Authority Joint Scrutiny Panel Paper

Raising awareness of riparian responsibilities

RECOMMENDATIONS

The Somerset Rivers Authority (SRA) Joint Scrutiny Panel is asked to:

1. Note David Jenkins' *Report of a review for the arrangements for determining responsibility for surface water and drainage assets* and its two recommendations for national moves by the Environment Agency and Defra (Department for Environment, Food and Rural Affairs) to review guidance on riparian owners' responsibilities, to promote that guidance, and to consider further steps.
2. Note that Defra has accepted Mr Jenkins' two recommendations about riparian responsibilities and that Somerset Rivers Authority has offered to pilot initiatives.

Purpose of this item

To draw attention to a report by David Jenkins, Chair of the Wessex Regional Flood & Coastal Committee and Somerset Rivers Authority (SRA) Board member. Among other things, the report deals incisively with riparian responsibilities - that is, the obligations that come with owning a watercourse.

This paper picks out some of the issues identified by Mr Jenkins and outlines what it is proposed to do nationally and locally in response.

Background

The subject of riparian responsibilities is one that has often stirred the SRA Joint Scrutiny Panel and the SRA Board. For example, a significant chunk of the Panel's meeting in September 2019 was devoted to discussing it, and it was picked up again in January 2020.

Partly prompted by the Panel's deliberations, on 24 July 2020 the SRA Board asked SRA Senior Manager David Mitchell to report back on 11 September 2020 with some initial thoughts about what could realistically be done in Somerset to raise awareness of riparian responsibilities.

Various issues were discussed at an SRA Technical Group meeting on 14 August. Questions for debate included current activities and gaps in Somerset as regards

riparian responsibilities; SRA partnership working and the role of the SRA's Riparian Responsibilities Officer; and "What do we want people in Somerset to feel, think and – crucially – **do** differently as a result of any awareness-raising activities?" One subject discussed was the sale and purchase of properties and land, and what could possibly be done to raise awareness about riparian responsibilities during this process, because it tends to get people far more interested than usual in matters concerning ownership and responsibilities.

On 26 August 2020 Defra published a review into surface water and drainage issues by the Chair of the Wessex Regional Flood & Coastal Committee, and SRA Board member, David Jenkins. Mr Jenkins' *Report of a review for the arrangements for determining responsibility for surface water and drainage assets* has a section devoted to 'Riparian and landowners' responsibilities' (pages 50-56; the full report can be accessed using this link [Report of a review of the arrangements for determining responsibility for surface water and drainage assets \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/90482/report-of-a-review-for-the-arrangements-for-determining-responsibility-for-surface-water-and-drainage-assets.pdf)). Page 53 features Somerset Rivers Authority and the SRA Joint Scrutiny Panel, and records the panel's "concern that public funds should not be used to relieve landowners of work and costs that should properly be the landowners' own responsibility".

Mr Jenkins commends an online guide to *Owning a Watercourse* published by the Environment Agency. This guide

"sets out the responsibilities of an owner as being to report an incident of flooding, blockage, pollution, unusual changes in the flow, or collapsed or badly damaged banks, to the Environment Agency. It also sets out the owner's obligation to let water flow naturally, and to remove blockages if they obstruct or impede this. It states that the owner should leave all other trees, branches and shrubs, as they can help prevent flooding by varying the shape and flow of the channel and reduce erosion, and should also keep any trash screen, weir, mill gate or other structure clear."

However, Mr Jenkins finds that misconceptions, inconsistencies and frustrations over riparian responsibilities are widespread across the country. In National Flood Forum surveys, the issue is regularly one of the top three that people are concerned about. Mr Jenkins says "a common theme" in many written submissions to him is "that riparian owners' responsibilities with regard to flood risk management and maintenance are ill defined and poorly understood". He adds that he has "given considerable thought, and discussed with others" how matters could be improved but "there has not been a single or predominant view that has emerged, other than a consensus that this is a significant issue that the public interest calls to be addressed".

One vital point highlighted by the Environment Agency to Mr Jenkins is that “there is no responsibility for flood and coastal asset owners to maintain their defences to a particular standard or the ability for risk management authorities to enforce a level of maintenance”.

This is particularly relevant when thinking about any awareness-raising activities that might try to get riparian owners in Somerset doing more maintenance. In situations where there is no consensus about necessary standards or levels, it is harder to get people to agree what should be done.

So there are limits as to what the SRA can reasonably be expected to achieve with regards to riparian responsibilities, that is over and above what is done by other Flood Risk Management Authorities such as the Environment Agency, the Internal Drainage Boards and Somerset County Council as the Lead Local Flood Authority.

New national approaches suggested by Mr Jenkins to this “complex and difficult topic” include, in summarised form:

- ascertaining, clarifying, and publicising the responsibilities of riparian owners under the existing law;
- changing the law so that riparian owners become duty-bound to maintain assets or features to a particular standard;
- entering into agreements with riparian owners, to accommodate or maintain structures or features on their land, which make a contribution to surface water flood risk management, “possibly involving payment of public funds” (maybe through Defra’s new Environmental Land Management Scheme);
- getting the Environment Agency to provide an advisory framework to facilitate risk management authorities entering into agreements with landowners to accommodate or maintain structures or features on their land, which make a contribution to surface water flood risk management.

Defra and the Environment Agency indicated to Mr Jenkins that they were not attracted to the last two suggestions.

Next steps

In his review, Mr Jenkins made two recommendations about riparian responsibilities. Namely:

- That in accordance with the commitment set out in the Surface Water Action Plan, the Environment Agency, in consultation with others as appropriate, review their guidance to landowners on *Owning a watercourse*, in particular to ensure that this is as clear and comprehensive as possible on riparian owners' responsibilities for maintenance of watercourses and related features, and that this guidance be promoted widely to those affected by it;
- That Defra consider what further steps the public interest requires to be taken, to ensure the maintenance of privately owned watercourses and related features, including culverted watercourses.

The Government has accepted these recommendations.

Defra's Flooding Minister is the Taunton Deane MP Rebecca Pow. On behalf of the SRA Board, Chair Cllr David Hall wrote to Ms Pow in October to welcome the Government's acceptance of Mr Jenkins' recommendations on riparian responsibilities and to encourage Defra to expedite this work. As Cllr Hall put it: "The Board hopes that the actions will be taken swiftly because the SRA is keen to do its bit to raise awareness of riparian responsibilities, and we would like to be able to act in a way that complements what Defra and the Environment Agency will be doing. If there are initiatives we can pilot in Somerset, we should be delighted to help."

Ms Pow's reply in December affirmed the Government's commitment to ensuring that riparian landowners are "clear on their responsibilities and better engaged in the protection of their communities".

She added: "We will be looking to all our stakeholders to help raise awareness and understanding about riparian responsibilities. This could include raising the profile of the Environment Agency's guidance on owning a watercourse (<https://www.gov.uk/guidance/owning-a-watercourse>). I would welcome the Authority's support in using and promoting this guidance locally."

The SRA has begun to use and promote this guidance more, for example in correspondence.

On the second of Mr Jenkins' recommendations, Defra has pointed out separately that the government's July 2020 Policy Statement on *Flood and coastal erosion risk management* includes "a commitment to review of the statutory powers and responsibilities to map, monitor, inspect and maintain all assets. This will aim to ensure that responsibilities are clear and that there are effective powers in place to enable inspection and maintenance to be undertaken."

More generally, Defra says it is carefully considering how the commitments and actions from the Policy Statement on *Flood and coastal erosion risk management*, the July 2018 *Surface water management action plan* and Mr Jenkins' review combine and complement each other.

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