



ANGLING TRUST

A STATEMENT ON INLAND NAVIGATION

Released 12 May 2009

The following statement sets out the Angling Trust's position on navigation of inland waterways.

The Angling Trust is the national body that represents all anglers and notes that it is settled law that there is no general public right of navigation on any inland waterway – see Appendix 1.

The Angling Trust confirms its support for the Government's and the Environment Agency's position, that the way forward, for increased access for other waters users, is by the creation of voluntary access arrangements. Angling Trust is keen to promote voluntary access agreements on all rivers where this is appropriate


The Angling Trust understands that it is not always appropriate that either angling or canoeing takes place on every day throughout the year.

The Trust does not advocate navigation or canoeing agreements on rivers:

- i) Where there is potential for environmental damage to the river;
- ii) On those small rivers where there is likely to be a significant risk of conflict between paddlers and anglers;
- iii) On those where riparian owners, whose permission needs to be sought in law for access agreements, would suffer unreasonable interference with the enjoyment of their property

In setting up access agreements, it is important to draw attention to the difference between permission to gain access across land to a river (for launching etc) and permission to navigate. Clearly both are needed to allow access agreements to work well in practice.

The Angling Trust is very concerned that governing bodies of canoeing are frequently mis-stating the law on navigation on rivers in England and Wales and thereby encouraging



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conflict. This makes the commissioning of voluntary access agreements less likely or even impossible. However, this will not stop the Angling Trust continuing to promote access agreements as the way of increasing access for canoeists in line with Government and Environment Agency policy.

The Angling Trust therefore encourages riparian owners and anglers to look at rivers where there have been successful arrangements for canoe access and government or local authorities to fund and facilitate such arrangements. As a means of by-passing any intransigence at a national level, the Angling Trust particularly supports the drawing up of agreements between local riparian owners, angling clubs, local canoeists and outdoor centres.

Where statutorily protected areas such as Special Areas of Conservation, Sites of Special Scientific Interest or similar are likely to be affected, Natural England, the Countryside Commission for Wales or any National Park authorities should be consulted. The Angling Trust would also expect the Environment Agency in England and Wales to advise on fishery protection aspects of any proposed agreements.

As well as contributing approximately £3.5 billion to the UK economy each year, all freshwater anglers in England and Wales are obliged to purchase a rod licence together with a permit to fish any waters. The £25 million revenue from anglers' rod licences contributes to the fisheries work of the Environment Agency in England and Wales, enabling it to pursue its statutory duty to maintain, improve and develop fisheries, as well as its other functions in relation to pollution control and conservation.

The Angling Trust's legal arm, Fish Legal, will advise members on proposed access agreements, including standard conditions, insurance, liability, signage, the provision of information and enforcement.

Ends



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Appendix 1

THE LAW OF NAVIGATION ON FRESHWATER IN ENGLAND AND WALES

Introduction

The current position of the law is settled in that no general public right to navigate in non-tidal rivers exists in England and Wales.

While the public has the right of navigation in tidal waters (e.g. Gann v Free Fishers of Whitstable (1865) 11 H.L.Cas; Blundell v Caterall (1821) 5B & Ald. 268), this depends on the presumption of the Crown's ownership of the land beneath the water. This presumption is rebuttable and there are some instances where the tidal riverbed is under private ownership.

The presumption of rights of navigation on tidal rivers contrasts with the very limited right on non-tidal rivers. The default position is that there is no such general right of navigation. Above the flow of tide the land beneath a river or stream is privately owned so that while the public can acquire navigational rights over such waters they cannot have them as of right

It has been held that rights of navigation on inland waterways are not analogous to rights of way on land (Wills' Trustees v Cairngorm Canoeing and Sailing School (1976) SLT 162 and AG ex rel Yorkshire Derwent Trust and Malton Town Council v Brotherton [1992] 1 All ER 230).


Acquiring rights of navigation

Post-Wills Trustees, the public acquisition of a right to navigate on a non-tidal waterway cannot be based on the usual arguments used for "immemorial user" for rights of way on land. The basis of a public right of navigation in a non-tidal river should be treated as being in a legal class of its own.

Of course, as is well recognised, a public right of navigation may also arise through statute. This is the most common way in which such rights arise.

No right for use of banks

Even in the situations where the public has a right of navigation in a non-tidal waterway (whether by grant, statute or immemorial user), this does not necessarily include the right to moor or to make use of the banks of the waterway in gaining access to or leaving the



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waterway. In A-G ex rel Yorkshire Derwent Trust and Malton Town Council v Brotherton [1992] 1 All ER 230, L Jauncy commented, *obiter*, that “. . .the public have no right to use the bed or banks of the river other than perhaps for anchoring in an emergency and for landing at a place where they are entitled so to do”.

Therefore, to moor and access the river in such circumstances, canoeists would need the permission of the owner of the river bank to avoid trespassing.

Remedies for the owners of fishing rights

In Rawson and Others v Peters (1972) 116 SJ 884; 225 EG 89, CA, the plaintiffs (claimants) owned fishing rights on the River Wharfe but did not own the bed or bank. They claimed an injunction and damages against defendant canoeists for interference with their rights. The case was heard at the Court of Appeal where Lord Denning decided that it was possible for an action to lie against the canoeists without proving damage to the fishing although this was not, strictly speaking, trespass to land in the usual sense. Nominal damages were awarded, with liberty to apply to the County Court for an injunction.

This case leaves fishing clubs with the remedy of an injunction against canoeists to restrain them from trespassing where there is no right of public navigation.

End.