

Trespass Briefing Note

The law of Trespass is an extremely complicated subject. While this briefing note is intended to provide some guidance to paddlers it does not provide definitive legal advice.

If you are paddling on a river, lake or other waters where there is a disputed public right of navigation, then it could be alleged you may be trespassing.ⁱ Usually trespass is a civil, not a criminal, offence (see the information on Aggravated Trespass below). Damages can be awarded against the trespasser and an injunction can be issued to prevent repetition of trespass or to restrain threatened trespass. As civil offence trespass is not a police matter unless a criminal offence is also committed. This would only be the case if wilful or malicious damage was done, there was a conspiracy to commit trespass, there was behaviour likely to cause a breach of the peace or it was a case of Aggravated Trespass.

Responding to Trespass Allegations

If you are challenged whilst paddling, **always**:

- Be courteous, calm and polite, and attempt to defuse the situation through positive dialogue.
- Seek to find positive ways of working with other water users, for example passing by anglers with minimal disruption (following our Code of Conductⁱⁱ).
- Avoid anything that could be interpreted as Aggravated Trespass, such as a breach of the peace, or conspiracy to trespass as these are criminal offences.
- Do not to admit trespass under any circumstances, or give your name or contact details unless a Police Officer asks for them (see below).
- If necessary complete the British Canoeing Incident Reportⁱⁱⁱ

Ordinarily you are not under any obligation to give any personal details (such as your name or address) to any person other than a Police Officer. In the case of a Police Officer having been summoned, the officer should be informed, in a positive manner, of the circumstances and that it is a civil matter and the police has no jurisdiction. However, always be aware of the need to cooperate with any requests a Police Officer makes, in a polite and open manner. If the Police have been called to an incident, it would be beneficial for British Canoeing to be notified of this, along with any relevant details such as the Police Officer's details.

An Environment Agency water bailiff, on production of a warrant, has the powers of a Police Officer, but only in relation to specific angling and fisheries related issues/laws^{iv}, such as poaching, fishing without a license or damage to spawning beds. You are not under any obligation to provide any personal details to an Environment Agency bailiff, as they are not empowered to engage in issues relating to navigation. Where there is a real risk of disturbance to spawning grounds an Environment Agency bailiff may ask you to leave the water. Although there is no legal power for this to be enforced we would strongly recommend working with the bailiff to do this (or find a suitable way of continuing your journey) in order to help prevent any environmental damage.^v

Bailiffs, gamekeepers or other representatives of either landowners or angling clubs are not authorised to demand personal details or to enforce any aspect of navigation or access legislation. However, we would remind all paddlers of the need to always be polite and courteous.

Should canoeists experience threatening or disorderly behaviour intended to harass, alarm or distress paddlers the incident should be reported to the Police and a Crime Number gained. British Canoeing should also be informed.

Aggravated Trespass

The Criminal Justice Act 1994 introduced the criminal offence of Aggravated Trespass. This should not be confused with Civil Trespass, which is a civil offence. To commit Aggravated Trespass you must first be trespassing; whilst trespassing you must also have the intention of obstructing or disrupting a lawful activity (such as hunting, shooting or fishing) or intimidating those engaged in such lawful activities^{vi}. Canoeists should not fall foul of this law if they canoe in a peaceful and considerate manner. We have no indication as to how the Police, the Crown Prosecution Service and the Courts will interpret the act where paddlers might be involved.

Trespass Cover within British Canoeing's Public Liability Insurance

British Canoeing's members are protected against Civil Trespass claims as part of the third party liability insurance. Please notify us^{vii} as soon as possible if there is the prospect of such a claim being made against you.

The cover **only** provides protection against Civil Trespass claims – not the criminal offence of Aggravated Trespass or any other criminal charges that could be levelled. We would draw attention again for paddlers to be aware of their behaviour on/by the water and to respond to all other users, land owners and others on our rivers in an open, polite and cooperative manner. This will reduce the possibility of Civil Trespass being escalated into other charges. Attention should be drawn to the criteria shown above for Aggravated Trespass, particularly that relating to intentional disruption or obstruction of a lawful activity.

The insurance cover simply allows for members to be covered against claims made against them. The method and process for settling the claim would be at the discretion of the insurers.

Last Updated 06/02/2017

ⁱ For more information regarding British Canoeing's policy and position regarding Public rights of navigation please see our accompanying Position Statement on Shared Use

ⁱⁱ See <https://www.britishcanoeing.org.uk/guidance-resources/waterways-environment/access/>

ⁱⁱⁱ <https://www.britishcanoeing.org.uk/about-canoeing/safety-guidance/incident-reporting/>

^{iv} For example the Salmon and Freshwater Fisheries Act

^v For more information see *Guidance for Environment Agency Fisheries Bailiffs – Canoeing and Fisheries (2007)*

^{vi} See http://www.cps.gov.uk/legal/s_to_u/trespass_and_nuisance_on_land/ for a more detailed description.

^{vii} Contact info@britishcanoeing.org.uk