

ACCESS LEGAL POSITION - TRESPASS

May 2008

The law of Trespass is an extremely complicated subject, this summary is not intended to provide a legal answer, but is given as guidance, so that paddlers are able to make a judgement on whether or not they wish to paddle a disputed water and also on a possible form of response in the event that they are challenged.

If you are paddling where there is no identified public right of navigation without permission, then you may be trespassing. Simple trespass is a civil, not a criminal offence. Damages can be awarded against the trespasser and an injunction can be issued to prevent repetition of trespass or to restrain threatened trespass. It is not a police matter unless a criminal offence is 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.

If you are challenged whilst paddling, always be courteous and polite whatever the situation. Avoid anything that could be interpreted as a breach of the peace or conspiracy to trespass (i.e. criminal offences). If you are challenged by an authorised official* you may be asked to give your name and address.

If you are accused of trespass, refuse to admit trespass under any circumstances. There is no case if you can prove that you are within your rights or have permission. Where you have a legal right the law requires you to exercise that right reasonably with due consideration for others.

*** Notes**

There is no legal obligation to provide your name and address to a challenger without proof of authority in the form of a warrant card.

In the case of a Police Officer having been summoned, the officer should be informed it is a civil matter and for which the police has no jurisdiction. However, as a refusal to give your name could be interpreted as a breach of the peace, you should offer to accompany the officer to his police station or office where you will state the facts. The number of the officer should be noted and the full circumstances reported to Canoe England.

An Environment Agency water bailiff on production of a warrant has the powers of a police constable, but only in respect of the Salmon and Freshwater Fisheries Acts. This is relevant to poaching and damage to spawning beds etc and not the enforcement of property and access rights.

Aggravated Trespass

The Criminal Justice Act 1994 introduced the criminal offence of aggravated trespass. This should not be confused with ordinary 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. 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.