Ownership of fish and fisheries
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Once a fishery has been acquired a series of issues arise which affect the enjoyment of that fishery.

- What is the extent of the rights to fish?
- Who owns the fish in the fishery?
- What can be done to prevent others from unlawfully fishing in your waters?

This fact sheet looks at the issue from the point of view of what rights you have and what you can do to protect those rights in civil and criminal law. It does not deal with statutory controls such as, for example, the need to have a rod licence, or the methods by which fish can be taken, which are regulated by the Environment Agency.

1. Rights to fish

1.1 Basis of the right

The right to catch fish is a right associated with the ownership of the land which abuts and lies beneath the water in question. Ownership of such land carries with it the rights over the water above the bed and these rights include the right of fishing. These rights are known as riparian rights. Therefore the owner of land abutting water has the exclusive right to fish for, take and carry away fish in the relevant lake or river (unless these rights have already been disposed of).

The right of fishing is what is known as a profit a prendre. This is a right which is “appurtenant” or attached to the land and benefits it. However this right can be severed or separated from the ownership of the bed by way of an outright sale or a lease in which case it becomes a separate legal interest. Profits a prendre which have been severed in this way can be registered at the Land Registry if they are freehold or by way of a lease of more than 7 years. (See related Fact Sheet 7 - Registration of fishing rights).

1.2 Restrictions on the grant of rights

Unless otherwise stated, the grant will be an unrestricted one to take all species. It is however possible to limit the way in which fish are caught, e.g. rod and line only or the species that can be fished for, e.g. game fish only. It might also be that restrictions are imposed on the right to carry away fish. For example there might be a bag limit or an obligation to catch and return. There may also be a restriction on the numbers who can fish the water, e.g. limiting the fishery to a certain number of beats.

The grant of fishing rights may also be subject to other uses which the grantor reserves to himself. These might include the right to water cattle, to retain a rod for the use of the grantor, or the right to use the water for navigation purposes.
1.3 Medium filum rule

In the case of a river fishery, the further question arises of what happens when the opposite bank is in different ownership. Lovett v Fairclough is authority for the principle that there is no right to fish beyond the middle line where the opposite bank is in different ownership.

To cast beyond the middle line is a trespass. In Scotland an opposite view was taken in the case of Fotheringham v Kerr, but Lovett v Fairclough is good law in England.

This situation can be the cause of friction, particularly on migratory fish rivers when the number of days with good fishing conditions may be limited, and therefore both banks of a fishery may be fished at the same time. In practice, in many cases anglers will cast beyond the middle line and often this is accepted by both parties. However if a good pool lies on one side of the river it is possible to prevent anglers casting into it from the opposite bank.

2. Ownership of fish

2.1 Basic position

The basic position is that fish once released into waters are “ferae naturae” or wild animals. As such they belong to no one in the same way as wild birds and animals on a person’s land belong to no one. There are some exceptions to this principle which are explored below.

There is therefore no ownership in fish until they are reduced to possession i.e. caught. This is an important consideration given the amount of money spent stocking fisheries. The rule is simple enough in the case of river fisheries. Fish are free to move up and down the river, and neither the owner nor the lessee of the fishing rights can claim ownership of fish present in the relevant stretch of the river.

2.2 Possible exception for still waters

In the case of still waters the position is less straightforward. There is authority from the case of Snape v Dodds that fish in an enclosed water will belong to that owner provided that he owns the whole of that fishery. He would therefore be entitled (subject to obtaining the necessary consents from the Environment Agency) to remove the fish to other waters or to sell them.

However, many still water fisheries or the rights of fishing in them are let or licensed to the club or syndicate fishing them. The problem arises if the lessee wants to remove fish to other fisheries during or at the end of the term or to sell them. If the lease in question is of the bed of the whole of the still water as well the rights then it is arguable that the lessee has the same rights to remove fish as the owner itself. However, there is a counter argument that as the fish are wild until caught, they remain the property of the landlord.

If the lease only grants the right to fish the water in question there is little doubt that the lessee cannot remove fish for restocking elsewhere or sale whether during or at the end of the term.
2.3 Promissory estoppel

One way in which this basic legal position could possibly be challenged is by the legal doctrine of promissory estoppel. In simple terms this provides that if one person (A) follows a course of action, in this case spending large sums on stocking a fishery, with the knowledge of another (B), here the owner, then B cannot rely on his strict legal rights if A followed that course of action in the belief that B would give him rights, here the removal of the fish, in return. In such a case the law prevents the owner from relying on his strict legal rights when his conduct makes it unreasonable that he should do so.

The case where the principle was first established was one where an owner had allowed another to build a bungalow in his grounds but did not make any written agreement in relation to the transfer of the land on which it was built. In due course the owner sold the land and claimed the bungalow formed part of it and that he therefore owned it. The court prevented this from happening and gave the person who had built the bungalow rights in it.

Relating that to the issue of ownership of fish, it will be clear that there has to be something in the nature of a promise from the owner upon which the lessee of the fishing rights relies before such a case could be started, or at least some conduct by the owner leading to the belief that the fish stocked were the property of the tenant. Mere acquiescence in the stocking of the fishery may not be sufficient. The case of Watson -v- Goldborough is relevant. Here an angling club were negotiating a lease with the owner. They occupied the site while negotiations continued and spent sums of money introducing fish with the owner’s knowledge. Eventually the lease was not granted and the owner claimed ownership of the fish. The court granted a lease to the angling club for one year and also the right to remove as many fish as they could be rod and line in that period.

2.4 Practical steps

All the above emphasises that there can be real difficulties in recovering an investment in stocking a fishery and the best way of dealing with the issue is to anticipate it. It is therefore very advisable to negotiate suitable terms with the owner when the fishery is taken on. These might reserve the right to remove fish above a certain size at the end of the term or require the landlord to make a payment for fish left. It is much easier to negotiate a fair deal before the problem arises rather than afterwards.

3. Protection of fishing rights

There are two aspects to the protection of fisheries. First is the right to prevent entry on to the fishery or unauthorised exercise of the rights. Second are rights to protect against theft of fish and damage to fish and fisheries. These rights are enforceable both as a criminal and civil remedies.
3.1 Trespass

It is a basic principle of common law that a person who owns land or an interest in land can take action to prevent trespass on that land or to the interest. The owner does not have to prove damage in order to start a claim. If trespass is proved then the court has the power to award damages or to grant an injunction.

A claim in trespass can be brought to protect an easement or profit a prendre (see above) over land, as well as ownership of the land itself. This means that action can be taken to prevent unauthorised use of the fishing even if you only have a lease of the fishing rights.

However it is important to emphasise that there has to be a sufficient interest in land to enable action to be brought. In simple terms this will require either ownership of the land or the rights or a lease of them. Many angling rights are enjoyed by licence, or other informal agreement that may not amount to an interest in land.

In those cases it is only the owner that has the right to bring an action. Where possible, when taking on a water as licensee, it is sensible to include a term that the owner will lend his name to an action where asked to do so, provided a suitable indemnity for costs is offered.

Incidentally, that is also an issue that can also crop up when waters are polluted. In order to bring a claim for damages it is essential to have a sufficient interest in the land to bring the claim.

3.2 Problems where there is a public access to the water’s edge

In practical terms, trespass, for the purposes of this fact sheet, means fishing without authority. In most cases this will be obvious, as it will be necessary to cross land owned or leased by the fishery owner before fishing can take place. However, in some cases, there may be a public right of way adjacent to the fishery, or the fishery may be tidal, where a public right to fish exists. Even in these cases, right of action will often be available.

It is decided law that a footpath is limited to the beaten path, and in any event the public right is limited to passing and re-passing on foot. There will in most cases be a bank between the path and the fishery, and there will be no public rights over the bank as it does not form part of the public right of way. Therefore, if a person fishes from that bank or if he passes across the bank to reach a boat, that act is unlawful. Additionally the owner of land also owns the air above it. Therefore it would also be an unlawful act to cast a line through that air space, from land not belonging to the fishery owner.

If the fishery owner only enjoys the rights to fish and not the leasehold or freehold in the bed and banks of the fishery, the owner can still prevent an unauthorised person from exercising the right to fish.

In the case of tidal waters, there is a public right to fish from a boat or from the foreshore at low water. There is however, no right to gain access to a boat or to the foreshore on foot from privately owned land adjacent to tidal waters, nor any right to fish a river from privately owned land.
3.3 Criminal offences relating to fisheries

Action can also be taken to prevent the unauthorised taking of fish or in common parlance poaching. The main remedy in this case is likely to be criminal although civil remedies do exist.

Paragraph 2(1) of Schedule 1 of the Theft Act 1968, makes it an offence where a person unlawfully takes or destroys any fish or attempts to do so in water which is private property or in which there is a private right of fishery. A private individual can bring a criminal prosecution, but it is normally undertaken by the Police or by the Environment Agency.

There is also a second, less serious offence, of fishing without authority. Where a person takes or destroys fish from a private fishery by angling during daylight hours, then that does not amount to the full poaching offence set out above. However it is still an offence punishable by fine only, not exceeding £200. This lesser offence only relates to fishing with rod and line. This offence is designed to punish the unauthorised angler less severely than the poacher.

At common law it would also be possible to bring an action against the poacher or unauthorised angler on the principles set out above. It is also possible that if a poacher were caught taking valuable fish, e.g. specimen carp that a civil action could be brought to recover the value of the fish that were unlawfully taken. In such a case it would be necessary to prove that the fish did belong to the fishery owner, see ownership issues above, and the value of the fish in question.