

Laying of Moorings in Tidal Water

The foreshore, namely the ground between high water and low water, and the seabed extending twelve miles out to sea is primarily owned by the Crown Estate Commissioners (CEC), unless a statute, Royal Charter or lease has vested an interest in the foreshore and/or the seabed (i.e. the “fundus”), in another party.

The current legal position is that the owner of the foreshore and seabed may charge for the laying of moorings on their property. Prior to 1968 there is little or no evidence of landowners charging commercial rents for mooring rights on their fundus. In ***Fowley Marine (Emsworth) Limited v. Gafford (1968) 2 QB 618*** however it was held that there was no common law right, therefore no public right, to lay or maintain permanent moorings, since it would be little less than fantastic that, in the absence of statute or proved local custom, the law should allow anyone navigating a ship or vessel, including every amateur yachtsman, to place bulky objects on another person’s land without permission and to retain them there, presumably forever, as being an ordinary incident of navigation. Since 1968, the practice has developed in nearly all mooring areas of landowners demanding, and mooring holders paying, a fee for the laying of permanent moorings.

Trespass

A person laying and maintaining a permanent mooring without permission may be trespassing and accordingly liable to the owner of the seabed, riverbed etc. on or in which the mooring is placed.

The Crown Estate Commissioners, the Duchy of Cornwall and the Duchy of Lancaster may bring an action for the recovery of land in the foreshore at any time before the expiration of sixty years from the date on which the right of legal action accrued, namely the date from when the mooring was laid without permission. Other owners of the foreshore and seabed must bring any legal action for the recovery of the property within twelve years of the legal action accruing.

Acquiring rights to lay moorings

As already stated, the current legal position at common law is that there is no general public right to lay and maintain moorings on another person's land without their permission. It is possible, however, that a public right could be established in a particular location, for example if it can be demonstrated that the public have in practice laid moorings in that

location “as of right” without interruption for at least 20 years, although this proposition is readily rebuttable by the owner of the foreshore or seabed.

It is also possible for the owners or occupiers of land adjacent to the foreshore or seabed to establish a private right to lay moorings on the adjoining foreshore or seabed, by way of “prescription”, if they can show that they have done so “as of right” without interruption for at least 20 years. Such a private right would accrue to the land adjacent to the foreshore or seabed but, again, this proposition is rebuttable by the owner of the foreshore or seabed.

The foreshore or seabed owner may also be dispossessed of their right to charge for the laying of moorings, by way of statute. An example of this is the Water Act 1973 which gave to Regional Water Authorities considerable rights previously owned by others.

In the case of *Ipswich Borough Council v Moore and Duke (2001) EWCA Civ 1084*, the Court of Appeal recognised that although the Council owned the area of foreshore or seabed on which moorings had been laid, any right to charge rent for such moorings which the Council may previously have had had been vested by statute in the Port of Ipswich Authority. It was accordingly held that Ipswich Borough Council had wrongly been charging yachtsmen for laying and maintaining moorings and the Council was required to refund all mooring holders who could be traced.

However, this case turned on the interpretation of several statutes peculiar to the Port of Ipswich and it is therefore unclear to what extent this case will have relevance to other cases where a harbour authority charges for licences to lay moorings and landowners also charge rent. In practice, the rights of the CEC are specifically preserved in many local harbour statutes.

Practical steps to lay moorings lawfully

A club seeking to lay moorings for its members should first identify whether the water in which they intend to lay the moorings falls within a statutory harbour authority area. If it does, the laying of moorings may be regulated by the harbour authority’s local legislation. The club should also contact the Crown Estate Commissioners to identify whether the foreshore or seabed on which the moorings are to be laid is controlled by them or has been leased to a tenant. Further, the club should identify any other local statutes, regulations or practices which may cover the intended mooring site.

Having clearly identified the status of the intended mooring area, the club will then know from whom they must seek permission to lay and use the moorings.

In addition to obtaining permission from the owner of the foreshore or seabed, the club may need to seek authority to lay the moorings from several other bodies, such as the harbour authority (if within a harbour area), the local Planning Authority and the Marine Management Organisation.

Marine Management Organisation

Part 4 of the Marine & Coastal Access Act 2009 prohibits the depositing of any substance or object in the sea or on the seabed without holding a Marine Licence. There are a number of exemptions from this requirement to hold a Marine Licence and more information is available on the RYA website at <https://www.rya.org.uk/knowledge-advice/regulations/marine-licensing/Pages/hub.aspx>

Planning Authority

The laying of a mooring can sometimes amount to development and therefore fall within the jurisdiction of the Planning Authority. Therefore, a Planning Authority may prevent a person from laying a mooring by serving an Enforcement Notice. Local Government areas are fixed by the Local Government Act 1972 and include every accretion from the sea, whether natural or artificial, and down to the medium low water mark. The medium low water mark is calculated to be the point of low water at a date halfway between neap and spring tides. An area may also be included within the parish either by historical settlement or because the natural line of a watercourse has changed. It is possible to check parish boundaries on some charts.

The case of *The Fagernes (1927) 96 L.J.P. 183* considered the question of what land lay within the British jurisdiction. The court took into account the historical method of determining whether navigable water fell within a parish boundary, namely that the water will be within a county if a person standing on the shore can see what is done on the opposite shore.

That arm or branch of the sea which lies within the *fauces terrae*, where a man may reasonably discern between shore, is, or at least may be, within the body of a county, and therefore within the jurisdiction of the sheriff or coroner.

Where different parishes are on the opposite shores, then, unless by other historical settlement, the boundary line extends to the middle of the water. However, the onus of proof that water falls within the planning authority will rest on the person asserting the fact. The recipient of a Local Council notice, such as an Enforcement Notice, may call upon the Local Council to prove that the fundus does come within their jurisdiction.

Development is defined in the Town and Country Planning Act 1990 section 55 as the carrying out of building, engineering, mining or other operations in, over or under land. The digging into the fundus of a concrete block or disc with an anchor bar to which the mooring line is fixed may be considered to be a development. The issue may not arise where the mooring rests on the fundus.

Harbour Authorities and marina owners

Harbour Authorities may derive their powers over harbour waters from Private Acts of Parliament or from the Harbours Act 1964 or both. Such Acts generally direct the Harbour

Authority to regulate moorings and anchorage, and to charge for moorings. Therefore, the Harbour Authority will have the right to prohibit the laying of unauthorised moorings.

If you require further assistance please do not hesitate to contact the Legal Team Tel: 023 8060 4223 Email: legal@rya.org.uk .

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