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Your ref: BMAA001

31 January 2012

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Dear sir,

**Re: Case Number: 1QZ38822 Mr Andrew Frederick Biddulph v Burton Mutual Angling
Association**

Please find enclosed a sealed copy of the defence filed in this matter.

Yours sincerely,

Mr Tony Dewberry
Civil Section
Ext

IN THE BURTON ON TRENT COUNTY COURT

CLAIM NO: 1QZ38822

BETWEEN:

MR ANDREW FREDERICK BIDDULPH

CLAIMANT

-and-

BURTON MUTUAL ANGLING ASSOCIATION

DEFENDANT

DEFENCE

1. The Defendant is not a legal person capable of being sued and so the statement of case is incorrectly pleaded. Burton on Trent Mutual Angling Association (“BTMAA”), who has been served with this claim, is an association of members. The Claimant has failed to establish a claim against BTMAA. Assuming that BTMAA is the correct party to these proceedings, and the Claimant will duly amend his claim form, BTMAA responds to the claim as follows.
2. The entirety of the Claimant’s statement of case is denied, and the Claimant is required to prove the same. With specific reference to the

three unnumbered paragraphs that constitute the entire particulars of claim, the following reasons are given:

- 2.1. First paragraph: BTMAA denies there exists a public right of navigation on the Dove and requires the Claimant to prove otherwise. The Dove is an inland non-tidal water course under private ownership. It is a long established principle of the common law that there is no general public right of navigation on non-tidal watercourses. This is because the soil over which the watercourses run is not vested in the Crown but in riparian owners. BTMAA relies on the case *Bourke v Davis (1889) 44 ChD 110* as authority to this effect. Accordingly, the fundamental basis to the entire claim is not only unsubstantiated but also false.

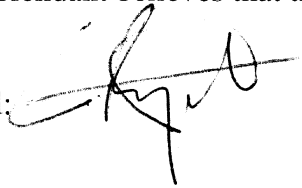
- 2.2. Second paragraph: BTMAA denies unlawfully restricting navigation and requires the Claimant to prove otherwise. BTMAA owns beneficial title to freehold profits a prendre in gross relating to fishing rights on the Dove, which are registered at the Land Registry under title numbers DY411991, DY411992, DY443079 and SF523633. These profits are held on trust solely for the association by the National Westminster Trust And Estate Services. A further stretch of fishing is owned but appears to be unregistered at this time. BTMAA owns in total approximately 9 miles of continuous fishing on the Dove from Tutbury weir downstream to the River Trent.

- 2.3. If it so wished BTMAA would be entitled to restrict navigation in order to protect its use and enjoyment of its fishing rights. BTMAA relies on *Rawson v Peters (1972) 225 E.G. 89* as authority that it could lawfully do

so, and could take legal action against canoeists for trespass, and in private nuisance for loss of amenity, if they did not accede to their wishes. In fact, BTMAA permits access by way of an access agreement negotiated with the local canoe club (Burton Canoe Club), of which it is inferred from previous correspondence that the Claimant is a member.

- 2.4. In fact, at no point has any physical restriction been placed on the Claimant's navigation on the Dove. He would merely run the risk of legal proceedings should he do so without the consent of BTMAA, in contravention of the said access agreement.
- 2.5. Third paragraph: The Claimant's entitlement to damages is denied and he is required to prove the same. BTMAA aver that there can be no such claim as it is based on a non-existent right. Furthermore, there has been no interference caused. Even where such a public right had been interfered with (which is denied in this case) the Claimant has failed to show why he as an individual could be entitled to damages specifically, and to the extent claimed.
3. An application to strike out the Claimant's statement of case was made on 12 January 2012 and this Defence is made without prejudice to that application. It can only repeat the grounds for that application due to the lack of detail in the Claimant's particulars of claim. BTMAA maintains that this is a frivolous and vexatious claim consisting of unsubstantiated allegations. There is no cause of action and thus no grounds for bringing this claim for damages.

The Defendant believes that the facts stated in the defence are true:

Signed: 

Status: Defendant's Solicitor

Dated: 26 January 2012

MR ANDREW FREDERICK BIDDULPH
AND
BURTON MUTUAL ANGLING ASSOCIATION

DEFENCE

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