

RIGHTS AND RESPONSIBILITIES

for Watercourse Maintenance



When do Rights and Responsibilities apply?

Rights and Responsibilities for **watercourse** maintenance, sometimes known as **riparian rights and responsibilities** are a **presumption** outlined in common law, which dates back to the Tudor times. They apply when the following criterion is met:

- person(s) or organisation(s) who;
- own or tenant* land which;
- contains or is next to a **watercourse**.



**The tenant and the landowner should agree between themselves who is to take on the maintenance responsibilities.*



What does Riparian mean?

The word “**riparian**” means next to water. It can be used as to describe people who live on, own or tenant land next to a **watercourse**, and for the environment next to a watercourse, for example **riparian** planting and **riparian** trees.

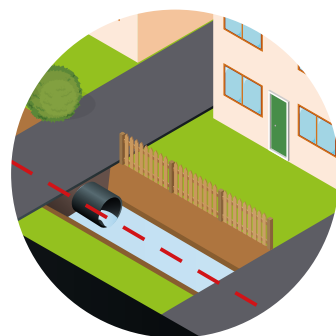
Riparian rights are to receive any flow of water from upstream, and **riparian** responsibilities are to maintain free flow of water for those downstream – i.e. to mow or trim grassy banks and where appropriate, remove vegetation such as trees and shrubs, and take actions to remove any other blockages.



Where there is a different landowner/tenant on each side of the **watercourse**, it is the **presumption** that **watercourse** maintenance rights and responsibilities apply up to the centreline of the **watercourse**, for the length of **watercourse** adjoining the parcel of land, unless there is any formal information indicating otherwise, such as in the **title deeds**.

This means there is no “proof” of who has maintenance responsibilities, but proof is not required as there is a presumption in common law that maintenance responsibilities apply.

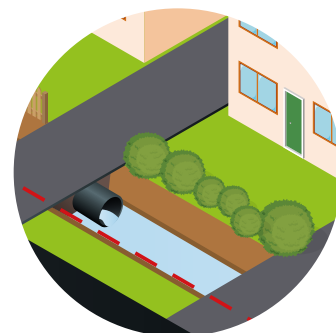
Maintenance responsibilities still apply, even if there is a fence or hedge between your property and the watercourse, or if there is **adopted public highway** on the other side of the bank.



If there is a fence between your land and the **watercourse**, the **presumption** remains that the **watercourse** marks the land boundary, rather than the fence, and therefore maintenance responsibilities still apply, unless there is any evidence to indicate otherwise, such as a statement in the **title deeds**.
(HM Land Registry, 2020)



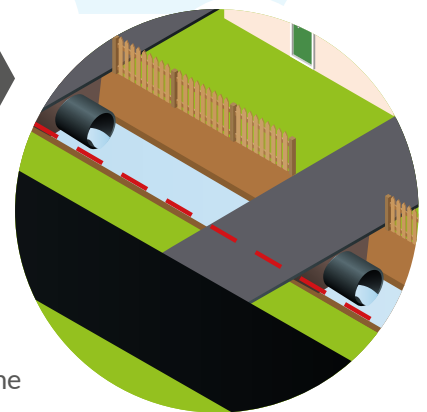
If there is a hedge, the landowner on the hedge side of the bank has maintenance responsibilities for the whole **watercourse**, rather than just up to the centreline. This is due to the “**Hedge and Ditch rule**” which dates to the 19th century.





If there is an **adopted highway road** on one side of the **watercourse**, the landowner on the non-highway side of the bank has maintenance responsibilities for the whole **watercourse**, rather than just up to the centreline.

This is due to the common law dating to the 19th century, which states that the highway authority only own the road and not the land beneath. The land beneath is owned by the land owners either side of the road up to the centreline of the road. Furthermore, maintenance responsibilities remain with the adjacent landowner or tenant, even if flows from the **adopted highway** discharge into the **watercourses**. This is because under the Highway Act 1980, the Highway Authority has a duty to discharge surface water from the highway.



Both the hedge, and highway instances came after the Riparian responsibilities case law, and therefore where they apply, they supersede it. (HM Land Registry, 2020).



Proof?

There isn't any proof required to demonstrate that riparian maintenance responsibilities apply. This is because they are **presumption** in common law, so if no evidence exists to demonstrate otherwise, or in other words to supersede, or "rebut" them, riparian maintenance responsibilities apply.



Flood Risk Management Authorities

Whilst overarching authorities have duties in **watercourse** management (see **Roles and Responsibilities for Watercourse Management**), they do not have any duties for **watercourse** maintenance, unless they own or tenant the land the **watercourse** is on or next to – in which case they have **riparian** responsibilities for maintenance, just like any other person or organisation would.

So **riparian** maintenance responsibilities remain regardless of whether an overarching authority manages a section of **watercourse**. However, it is still best to check with the relevant managing authority of the **watercourse** before undertaking maintenance. More information on this is available in "**Roles and Responsibilities for Flood Risk Management Authorities**"



Encouraging the uptake of maintenance responsibilities.

Many **watercourses** in Cambridgeshire have a large number of people or organisations with maintenance responsibilities. This means it can be challenging to ensure the works are undertaken across the whole **watercourse** length. There are many reasons why a person or organisation might struggle to uptake maintenance responsibilities, for example:

- Lack of awareness on what the maintenance responsibilities are
- Lack of funds and means to access the tools and materials needed to undertake the maintenance
- Lack of knowledge on how to undertake maintenance
- Social issues which make undertaking the works and engaging with community groups more challenging. For example, student populations, older and/or vulnerable adults may need more support with uptake of maintenance responsibilities than the general population



It's important to have empathy for people in these difficult situations. It may take time for awareness of responsibilities to sink in. Equally the reality of being flooded is extremely challenging, and this can raise disputes and disagreements among communities if lack of **watercourse** maintenance is a contributing factor to the flooding. It is, therefore, valuable to spend time building relationships in the community. It may be possible, in spending time alongside others in the community, to find common ground, seek resolutions and overcome the barriers to taking up **watercourse** maintenance responsibilities.

The story below is an example of how communities can work together on watercourse maintenance.

- 1 Helen, Ben, and Amal all live adjacent to a watercourse. Helen has a disability that make it difficult to maintain her stretch of watercourse.
- 2 She lives opposite Ben who has a fence between his garden and the watercourse and works as a lorry driver so is often away from home.
- 3 Amal lives next to Helen and English is her second language, her section of the watercourse is culverted.

Whilst Helen struggles with the physical maintenance, she reminds Ben and Amal to inspect the watercourse quarterly and after heavy rainfall. She also works with Amal to make sure she understands the Watercourse Guidance and her maintenance responsibilities.

Ben and Amal maintain the open stretch of watercourse, alternating mowing Ben and Helen's side each year, and they do fundraising activities together throughout the year to help Amal pay for a contractor to maintain her stretch of culvert.



! Raising awareness

It's our job at Cambridgeshire County Council, as an authority with responsibilities for flood risk management, to raise awareness of **riparian** maintenance responsibilities, and encourage people to uphold them. We do this in several ways:

- Writing to those with maintenance responsibilities to ask them to undertake maintenance and meeting them on site if required
- Providing guidance on how to undertake maintenance for those with responsibilities
- Engaging with community flood groups and encouraging them to spread the message about **watercourse** maintenance responsibilities in their communities
- Providing data and information about the flood risk and **watercourse** maintenance responsibilities to communities, groups and individuals who request this

 If you have any suggestions for other ways that we could raise awareness or would like to report an issue with **watercourse** maintenance, please contact us using the details at the end of this document.

Explanation of terms

 **Riparian** The word “riparian” means next to water, it can be used as to describe people who live on, own or tenant land next to a watercourse, and for the environment next to a watercourse, for example riparian planting and riparian trees.

 **Presumption** A legal term used to indicate a statement is true, based on historical matters, if there is no other evidence to indicate against in absence of evidence to indicate otherwise.

 **Riparian Rights and responsibilities** Riparian rights are to receive any flow of water from upstream, and Riparian responsibilities are to maintain free flow of water for those downstream. They apply to any person or organisation, who owns or tenants land which contains or is next to a watercourse.

 **Title Deeds** A legal document showing constituting evidence of any rights and ownership of property.

 **Hedge and Ditch rule** Rule stating that the landowner or tenant who has a ditch adjacent to a watercourse, has a land boundary containing the entire watercourse.

 **Adopted public highway** Roads, pavements and footpaths that are adopted by the local highway authority for maintenance. In Cambridgeshire, the local highway authority is part of Cambridgeshire County Council.

 **Watercourse** Over the years many different words have been used to describe the natural and urban systems that store and move water: river, stream, ditch, dyke, swale, lode, culvert, piped watercourse. We use the term “watercourse” as an umbrella term to describe any channel, above or below ground, that moves water from one place to another.

Watercourses and waterbodies do not need to have a formal inlet or outlet to move or store water. Water can enter from rainfall, overland or groundwater inflow, and exit either by soakage into the ground beneath, or by evaporation. Usually, smaller watercourses discharge into larger watercourses, in a network that moves surface water runoff from rural and urban areas into rivers, and then out to the sea.

References

HM Land Registry, 2020. HM Land Registry plans: boundaries. In: Practice Guide 40, supplement 3. s.l.:s.n., pp. 11.1-11.3.

Contact us

If you require assistance accessing any data or information discussed above, have a query, or would like more information about a topic or relating to your site, please do not hesitate to contact us at:

floodandwater@cambridgeshire.gov.uk or Call 0345 045 5200
between 9am-5pm Monday to Friday, ask for a member of the Flood Risk team.

Flood Risk team

**New Shire Hall
Box ALC2619
Emery Crescent
Enterprise Campus
Alconbury Weald
PE28 4YE**