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Risk control

Managing Risks associated with Swimming Pools in Education



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Introduction

This guide relates to school's use of swimming pools (usually enclosed) as part of the everyday student activities. It considers the liability risks of local authorities and teachers with responsibility for the process of facilitating children swimming at local pools.

The guidance does not cover children using leisure pools as recreation, where children engage in different activities. Neither does it cover open water activities, where water is an incidental hazard (such as in canoeing, sailing or other water-based events).

The Risk

Generally, risk in respect of educational visits to swimming pools will be shared amongst different stakeholders including:

- The user - a woman won a judgment against her local authority after she nearly drowned during a school swimming lesson was awarded £2m in compensation (The Guardian. 2016)
- The school - liability for provision of safe infrastructure (Swim England. 2018)
- Facilities providers - the legal duty on the provider to supervise activities in the pool, particularly the young (London Borough of Hounslow. 2016.)
- Contractors and utilities - general operational and safety recommendations for the management of swimming pool water treatment systems and associated water treatment plant, heating and ventilation systems (Pool Water Treatment Advisory Group, 2016.)

The Law

The local authority cannot exclude or restrict their liability when providing swimming lessons outside the narrow focus of the education curriculum. The Summary of legal responsibilities below has a longer explanation.

There is no specific legislation on managing swimming lessons in the public sector. The key legislation for those holding responsible positions in the provision of lessons and facilities are the Health and Safety at Work etc. Act 1974 (Health and Safety at Work etc. Act 1974), and the Occupiers' Liability Acts 1957 and 1984 (Occupiers' Liability Act 1957. 2018). In practice, this legislation implies a level of care for providers that are captured in the notion of 'reasonableness'.

The Management of Health and Safety at Work Regulations 1999 impose a legal duty on providers to carry out a 'suitable and sufficient assessment' of the risks associated with a site or activity, to document their assessments and to act accordingly (Management of health and safety at work. 2018.)

Local authorities also have an overall responsibility to promote community well-being. This inevitably involves balancing a range of considerations, of which reducing adverse outcomes such as injuries are just one of a number. Whilst not covering swimming lessons specifically, the Health and Safety Executive (HSE) provides guidance on school trips and outdoor learning activities (Health and Safety Executive, -, 2011).

The expectations are that:

- schools and staff focus on real risks when planning trips;
- those running trips understand their roles, are supported, and are competent to lead or take part in them;
- the real risks are managed during the trip; and
- learning opportunities are maximised.

Vicarious Liability and Non-Delegable Duties

Vicarious liability refers to a situation where someone is held responsible for the actions or omissions of another person. The summary of legal responsibilities below has a longer explanation.

For a long time it has been assumed that local authorities have been vicariously liable for the negligent actions of their employees. Of more recent times, the Supreme Court has recognised that local authorities could, in certain circumstances, be found liable for the negligent actions of third parties.

As local authorities are increasingly required to outsource services, the judgement of the Supreme Court places a greater importance on local authorities to ensure that third parties are reasonably competent and able to carry out services on their behalf.

Consent

It is expected that the school will follow the normal procedure of asking parents or guardians to sign a consent form when they first enrol their child. This form will cover a child's participation in any school activity that needs a higher level of risk management or that takes place outside school hours (GOV.UK. 2014).

Risk Assessment

The service provider should be able to provide a specific risk assessment of the location, and physical characteristics (such as pool design, safety and security, safeguarding and child protection measures) appropriate to the lesson needs. Competency of assessment is explained in the *Summary of legal responsibilities* below.

Finally, before heading off for the pool, check that there have been no very recent reported cases of illness in other local pools or leisure services. This may be important due to the way in which viruses migrate and thrive within populations.

Transport

If road transport is required, then road risk is an important consideration. Assurance must be gained that the driver is competent to operate the passenger vehicle and that the vehicle is roadworthy and meets the minimum standards laid out in any local authority fleet policy.

Head teachers should have suitable and sufficient training to ensure they are aware of their responsibilities regarding driving at work, and that drivers have knowledge of the existing legal and health and safety process (particularly risk assessments) regarding vehicle and driver operations.

All mini-bus drivers must have received training by a qualified safety team. New drivers should be assessed by the local authority Occupational Health, to ensure they meet DVSA standards of medical fitness (GOV.UK. 2018).

Controls

The Facilities

Assess the facilities that are available before selecting the most appropriate swimming pool to meet needs and safety standards.

Suitable life-saving equipment must be provided, such as buoyancy aids and throwing ropes. These must be available, maintained in safe working order, and be clearly identifiable.

Emergency alarms where installed must have clear written instructions as to their use and sound distinct from any other alarms, so that the sound is clearly identifiable as a pool alarm. There must be evidence that lifesaving equipment and alarms are regularly checked and tested.

Supervision

Constant supervision of children whilst at the swimming pool is essential. It is not sufficient to rely solely on the supervision of the lifeguard at the pool-side. Minimum supervision levels, as determined by risk assessment, must be met at all times, including cover for rest breaks, natural breaks, and shift changes.

Buoyancy aids

Swim jackets that contain floats are helpful in giving children confidence in water whilst learning to swim. If they are to be used then suitability and size are important considerations. All buoyancy aids should be compliant with British Standard BS EN 13138:2014 'Buoyant aids for swimming instruction. Safety requirements and test methods for buoyant aids to be worn' (BS EN 13138-1:2014).

Teacher skills

Whilst there are professional qualifications for life-guard skills, such as National Pool Lifeguard Qualification (NPLQ), such dedicated National rescue awards would be too onerous for teachers and coaches providing ad hoc or weekly structured sessions. Qualifications such as (NASTIC Light) are designed for teachers working on the poolside or in the water during programmed activities. They may be regarded as an appropriate qualification when lifeguard or first aid back up is available to respond quickly in the event of an emergency.

Hygiene

There are a number of water-borne diseases and parasites associated with public swimming pools, which have the potential to affect large numbers of people before being accurately detected (BS EN 13138-1:2014). Amongst these is cryptosporidium which can infect the bowels (intestines) and cause cryptosporidiosis. This is a form of bowel infection called gastroenteritis, which leads to diarrhoea and vomiting. The parasite is protected by an outer shell that allows it to survive outside the body for long periods of time and makes it very tolerant to chlorine disinfection.

The Pool Water Treatment Advisory Group (PW TAG) provides guidance on swimming pool water quality and treatment which is recognised by enforcement authorities as the standard to be achieved in effectively managed swimming pools and a useful resource for pool operators when drawing up their operating procedures (BS EN 13138-1:2014).

First Aid

Where lifeguards are provided they must be properly qualified, with a qualification from a recognised training organisation. Pool operators must also ensure that their staff are trained in pool rescue, first aid and cardiopulmonary resuscitation (CPR) techniques.

Emergency Rescue

It is extremely unlikely that any form of emergency will arise from a well-planned lesson in a public swimming pool. However, the risk assessment should consider such factors.

Emergency planning activities include:

- Practice and rehearsal, as part of emergency /business continuity / recovery exercises.
- Involve and practice with the rescue services, to develop appropriate first aid measures that preserve life until the emergency services arrive on site.
- Emergency response must reflect the site location, response times and the equipment and training provided.

Child Admission Policies

Establish what the child admission policies are in operation within the pool facility considered for use to ensure that appropriate categories of users are taken into account when considering risk. For instance, it would not be beneficial for very young persons to be using pool facilities alongside more advanced adult swimmers. The Institute of Sport and Recreation Management have published relevant guidance which should be considered (The Institute of Sport and Recreation Management. 2017).

Safeguarding and Child Protection

Ensure that the swimming pool provider operates a changing-room policy that fits with the safeguarding and child protection criteria set by your school. Ensure that there are sufficient staff to provide supervision of children of different ages and sexes. The ISRM offer guidance about this in relation to changing for school groups (Ref 15).

Summary of Legal Terms

Local authorities have a responsibility to take **reasonable care** to avoid acts and omissions which could reasonably foreseeably injure a neighbor. Donoghue created the modern concept of negligence, by setting out general principles whereby one person would owe another person a duty of care. Caparo sets out the "three-fold test" in order for a duty of care to arise in negligence (Ref 16).

No one can exclude or restrict their liability for the death or personal injury of another resulting from their negligence. Liability for negligence in other cases of loss or damage can be excluded or restricted only if it is reasonable so to do (Unfair Contract Terms Act 1977)

Vicarious liability refers to a situation where someone is held responsible for the actions or omissions of another person. In a workplace context, an employer can be liable for the acts or omissions of its employees, provided it can be shown that they took place in the course of their employment. The state of vicarious liability for local authorities has been subject of a Supreme Court decision in 2017. In the case NA (Armes) v Nottinghamshire County Council (Ref 19) the Supreme Court determined that a local authority should be fixed with vicarious liability by applying the five stage test developed through other recent cases such as Cox v MoJ [2016]. The majority concluded that where a non-delegable duty is sufficiently integral to the local authority's "business activity" and that the local authority had sufficient control to satisfy the relevant elements of the test. The ability of the local authority to pay the claim, and the fact that primary defendant would be unlikely to be able to do so, was also a factor in the court's reasoning.

The risk assessor will be a need to be competent in the risk assessment process itself, with an understanding of the approach to risk assessment and methodology used by the school. They must apply this skill to hazards present, and identify the options available to eliminate or reduce risks and their relative merit (current and potential risk control measures). For extra-curricular activities such as swimming in a local pool, the ability to identify situations where they would be unable to adequately assess the risk without help and be able to advise on the need for further assistance, is also important.

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